

Town of Cheshire  
PRELIMINARY DRAFT

## Division 1: Bylaws

### Part I: Administrative Legislation

#### Chapter 1 General Provisions

**[HISTORY: Adopted by the Town of Cheshire as indicated in article histories. Amendments noted where applicable.]**

##### Article I Adoption of Code

**[The General Bylaws of the Town of Cheshire will be readopted at Town Meeting in June 2022.]**

#### Chapter 7 Boards, Commissions and Committees

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire as indicated in article histories. Amendments noted where applicable.]**

##### Article I Finance Committee

**§ 7-1 Membership and terms.**

There shall be a Finance Committee consisting of seven voters of the Town to be appointed by the Moderator of each annual Town Meeting ~~as increasing the number from six to seven voters and to change the term~~serve terms of appointment, three to years. Three members shall be appointed every third year and two to~~members shall be appointed on each of the other years. (Voted February 28, 1966 -- Approved March 9, 1966)~~

**§ 7-2 Powers and duties.**

Such Finance Committee shall consider all appropriations recommended by the Selectmen and other Town ~~O~~officers and ~~C~~committees for the financial year, and also the articles in the warrant calling for expenditures of money, and shall recommend amounts to be appropriated for the expenditures of the Town, and in the discharge of its duties shall have free access to all books of account, books of record and all accounts, bills and vouchers on which money has been or may be paid from the Treasury.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 7-3 Report to Annual Town Meeting.**

Said Finance Committee shall report its findings and recommendations at the next Annual Town Meeting and at each and every Town Meeting held during the term of its office.

**§ 7-4 Transfer of funds.**

Such Finance Committee shall have the authority to transfer such sums of money as may be necessary during the year from the Reserve Fund to other accounts in which there is a shortage of funds to properly carry out the work of the year.

**§ 7-5 Vacancies.**

Any vacancies occurring in said Finance Committee shall be filled by the Moderator.

**Article II**  
**Cemetery Committee**

**§ 7-6 Membership; filling of vacancies.**

At each Annual Meeting there shall be chosen one member of the Cemetery Committee for three years; ~~vacancies in said committee to~~ Committee shall be filled at the next Annual Meeting after such vacancy occurs, and persons chosen to fill such vacancy shall hold office during the unexpired term of the person whose place ~~he fills~~ they fill.

**§ 7-7 Meetings; organization; duties of Chair.-**

The Cemetery Committee shall meet annually in May after elections, and shall organize by the choice of the Chairman. It shall be duty of the Chairman to keep record of the doings, receipts and expenditures of the Committee and render reports thereto to the Selectmen monthly and the Town annually.

**§ 7-8 Finances.**

The Cemetery Committee shall direct the expenditures of all general cemetery funds in the Cemetery Account which it has received, and of all specific appropriations unless otherwise ordered by the Town; also the income of all ~~Trust Funds~~ trust funds held by the Town for ~~Cemetery~~ purposes, agreeable to the direction of the depositor.

**§ 7-9 Records to be maintained.**

~~Said~~ The Cemetery Committee shall keep a complete record of all internments in the cemeteries of the Town, including the name of the deceased and the location of the grave.

**Article III**  
**Board of Health**

**§ 7-10 Annual report.**

The Board of Health shall ~~Annually~~ make a report to be printed in the Annual Town Report, showing in detail the statistics of the health and sanitary condition of the Town, with recommendations for its improvements, together with a full and comprehensive statement of its work and that of its appointees during the previous year; ~~s~~ Such report shall also contain a detailed statement of the amounts expended by the Board of Health during this fiscal year.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**Article IV**  
**Council on Aging**

**§ 7-11 Purpose.**

There shall be a Council on Aging in the Town of Cheshire for the purpose of coordinating or carrying out programs designed to meet the ~~problem~~needs of the aging in coordination with programs of the ~~Commission on Aging~~Department of Elder Affairs, established under Section 73 of Chapter 6 of the General Laws, MGL c. 19A, § 1.

**§ 7-12 Membership.**

The Council shall consist of seven members, residents of Cheshire, three of which shall be over 62 years of age. The members of the Council shall be appointed by the Board of Selectmen.

**§ 7-13 Report to Annual Town Meeting.**

The Council shall submit an Annual Report to the Town and shall send a copy thereof to the ~~Commission on Aging~~Department of Elder Affairs.

**§ 7-14 Staff.**

The Council may appoint such ~~C~~clerks and other employees as it may require.

**§ 7-15 Identifying information.**

The names, addresses, telephone numbers or other identifying information about elderly persons in the possession of the Council shall not be public records, but the use of these records shall comply with MGL c. 19A, §§ 14 to 24, inclusive, as a condition of receiving a government contract, program grant or other benefit, or as otherwise required by law.

**Article V**  
**Agricultural Commission**

**§ 7-16 Establishment.**

The Town shall establish an Agricultural Commission to represent the Cheshire agricultural community with its farming and forestry activities.

**§ 7-17 Purpose.**

The purpose of the Agricultural Commission will be to support commercial agriculture, forestry and other farming activities in the Town of Cheshire.

**§ 7-18 Duties.**

The Commission's duties shall include but not be limited to the following:

- A. Promote agricultural-based economic opportunities in Town;
- B. Act as mediators, advocates, educators, and/or negotiators on farming issues;
- C. Work for the preservation of prime agricultural lands;

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- D. Advise the Board of Selectmen, Board of Health, Historical Commission, Board of Assessors and any other appropriate Town Boards on issues involving agriculture;
- E. ~~Shall pursue~~Pursue all initiatives appropriate to creating a sustainable agricultural community and encourage next generation farmers.

**§ 7-19 Membership; terms.**

The Commission shall consist of five members, people interested in farming or forestry, appointed by the Board of Selectmen, of which the majority of the membership shall be substantially engaged in the pursuit of agriculture. All members of the Commission must either be residents of the Town, or owners and farmers of agricultural property within the Town.

- A. Initially, two members shall be appointed for three years, two members for two years, and one member for one year. Thereafter, the appointments shall be for three-year terms.
- B. There may be up to three alternates appointed to the Commission by the Selectmen to fill vacancies at a meeting of the Commission.

**§ 7-20 Meetings; officers.**

The Commission shall meet ~~bi-monthly~~bimonthly and more often as desired. A Chairman and Secretary shall be elected at the first meeting in any calendar year.

**§ 7-21 Annual report.**

Said Commission shall make an annual report at the Annual Town Meeting, which shall also be published in the Annual Town Report.

## Chapter 12

### Bylaws

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

**§ 12-1 Repeal or amendment.**

These ~~By-Laws~~bylaws shall not be repealed or amended, except at an Annual Meeting, ~~Acting under an Article in the Warrant for the purpose, and by Two-Thirds~~2/3 of those present and voting.

**§ 12-2 When effective.**

These ~~By-Laws~~bylaws shall take effect from and after their approval by the Attorney -General of the Commonwealth of Massachusetts.

Town of Cheshire  
PRELIMINARY DRAFT

## Chapter 24

### Finances

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

**§ 24-1 Warrants required for payment.**

No money shall be paid from the Town Treasury, except for ~~Sstate and County Taxes~~ county taxes and for other payments required by law to be made from the Town Treasury, without a warrant therefor signed by the Selectmen or a majority of them, which warrant shall state the appropriation from which such money shall be paid.

**§ 24-2 Approval of bills required.**

No bill, draft, order, charge or account against the Town shall be paid without first being approved in writing by the person, board or other Town ~~O~~fficer incurring the same.

**§ 24-3 Detailed accounts required.**

It shall be the duty of the Selectmen to require detailed accounts showing items and dates in all bills against the Town.

**§ 24-4 Certification of appropriations.**

The Town Clerk shall, as soon as an order or vote appropriating money becomes effective, certify to the Selectmen, and to the Board of Assessors, each appropriation in detail, and the provision made for the meeting the same if so specified in the appropriation order or vote.

**§ 24-5 Custody of documents.**

The Treasurer shall have the custody of all receipted bills, and the receipts from all notes, bonds and coupons which have been paid, and of all bonds running to the Town, except his own official bond, which shall be in the custody of the Town Clerk.

**§ 24-6 Deposits for care and preservation of burial lots.**

All sums of money hereafter deposited with the Town Treasurer in accordance with the provisions of ~~Chapter 82, Section 17, of the Public Statutes,~~ MGL c. 114, § 83C shall be credited to the amount of "Cemetery Fund" and the Town Treasurer shall keep in his office a book which shall contain a record of all funds deposited, the date of such deposit, name of depositor, name of cemetery, containing the lot in connection with which the deposit is made, and the location and number of said lot.

Town of Cheshire  
PRELIMINARY DRAFT

## Chapter 43 Legal Affairs

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

**§ 43-1 Authority to prosecute and defend claims and employ legal counsel.**

The Selectmen shall have the authority to prosecute, defend or compromise all claims, actions, suits and controversies to which the Town shall be a party, and to employ counsel therefore, unless specifically ordered by a vote of the Town.

**§ 43-2 Selectmen's authority to appear before official bodies.**

The Selectmen may appear (either personally or by counsel) before any committee of the legislature, or board of or commission to protect the interest of the Town, but are not authorized by this ~~By-Law~~bylaw to commit the Town to any course of action.

**§ 43-3 Records of deeds and conveyances.**

The Town Clerk shall keep a true copy (in a book to be kept for such purpose alone) of all deeds and conveyances executed in behalf of the Town by any Town Officer. It shall be the duty of the Town Clerk to see that every conveyance to the Town of any interest in real estate is properly recorded in the Registry of Deeds.

**§ 43-4 Authority over Town property.**

The Selectmen shall have the care of all property owned by the Town and not by law under the control of some other Town ~~Officer~~, and be responsible for the same.

## Chapter 55 Officers and Employees

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire as indicated in article histories. Amendments noted where applicable.]**

### Article I Tax Collector

**§ 55-1 Powers and duties.**

The Collector of Taxes shall have the same power and shall use all means and processes provided by law which ~~Town Treasurer~~town treasurers may use when Collectors of Taxes.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 55-2 Annual report.**

The Annual report of the Collector of Taxes shall contain a statement of the amount of taxes and assessments committed to him for collection, the amount collected thereon with interest, the amounts of abatements, and the amount of uncollected taxes, and the amount paid over to the Treasurer.

**Article II**  
**Town Counsel**

**§ 55-3 Appointment; salary.**

The Selectmen shall annually on or before the first day of March, and whenever a vacancy exists, choose some competent lawyer to act as Town Counsel, who shall be paid such salary as they may determine.

**§ 55-4 Prosecution and defense of claims; employment of legal counsel.**

The Selectmen shall have authority to prosecute, defend and compromise, through Town Counsel, all litigation to which the Town is a party, and to employ special counsel whenever, in their judgment, necessity therefore arises.

**Article III**  
**Annual Meeting**

**§ 55-5 Time of meeting; purpose; conduct.**

A Mmeeting of all elected and appointed Town officials shall be held in a Town building on the second Wednesday of April and October at 7:00 p.m., for the purpose of communication between the various boards and departments of the Town. The Mmeeting shall be chaired by the Chairman of the Board of Selectmen.

Article IV  
Town Moderator

§ 55-6 Term of Moderator.

The term of any person appointed to the position of Town Moderator shall be three years.

**Chapter 67**  
**Reports**

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

**§ 67-1 Annual reports.**

All officers, boards, departments, committees and commissions shall prepare an annual report on a fiscal-year basis. Such fiscal-year reports shall be printed within 90 days of the close of the fiscal year. Cheshire Annual Town Reports ~~to~~shall be prepared and printed by January 1 of each year.

Town of Cheshire  
PRELIMINARY DRAFT

## Chapter 78

# Town Meetings

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

**§ 78-1 Annual election and meeting; poll hours.**

- A. The Annual Town Meeting for the election of Town officers shall be held on the First Monday in May each year, for the following purposes: to ~~wit: To~~ choose by ballot the officers to be elected; ~~For the purposes this purpose~~ the polls shall be opened at 9:00 a.m. and closed at 7:00 p.m.
- B. The meeting for other Town ~~B~~business shall be held on the second Monday of June at 7:00 p.m.
- C. In all meetings for the election of ~~National, State, County~~national, state, county, and ~~District Officers~~district officers, the polls shall be opened no later than 9:00 a.m. in the forenoon.
- D. For all other elections, the polls shall be open for such time as the Selectmen shall set, but in no event shall the time be less than six hours.

**§ 78-2 Warrants.**

All ~~W~~warrants for Town Meetings shall be served by posting attested copies thereof in three or more public places in the Town, at least seven days at least before the day appointed for said meeting the Annual Town Meeting and at least 14 days before any Special Town Meeting.

**§ 78-3 Quorum; presentation of reports.**

- A. At any Annual Town Meeting at least 50 legal voters of the Town will be necessary for a quorum. All reports of Town ~~O~~officers shall be made at this time.
- B. At any Special Town Meeting at least 35 registered voters will be necessary for a quorum.

**§ 78-4 Conduct and procedures.**

- A. The Moderator shall preserve decorum and order, may speak to points of order in reference to others, and shall decide all questions of order.
- B. Articles in the Town Warrant shall be acted upon in their order unless otherwise directed by vote of the Town.
- C. Any motion or question submitted for consideration of the Town involving the expenditure of money, shall be in writing when so required by any legal voter, or by the Moderator.
- D. A motion to pass over an article shall be debatable.



**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 78-5 Notice.**

Manner of calling ~~town meetings~~ Town Meetings where the notice is given by posting notice in one or more public places at least seven days prior to the date set for said meeting:

- A. ~~Note:~~ Posting seven days for Annual Town Meetings, Annual Town Elections.
- B. Posting 14 days for Special Town Meetings.

## **Part II: General Legislation**

### **Chapter 103** **Alcoholic Beverages**

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

**§ 103-1 Public consumption prohibited.**

No person shall drink any alcoholic beverage as defined in ~~Chapter~~ MGL c. 138, Section 1 of the ~~Massachusetts General Laws~~ § 1 while on, in, or upon any public way to which the public has a right ~~to~~ of access, or place to which members of the public have access as invitees or licensees, park or playground, or private land or place without consent of the owner or person in control thereof. All alcoholic beverages being used in violation of this section shall be seized and safely held until final adjudication of the charge against the person or persons arrested or summoned before the court, at which time they shall be returned to the person entitled to lawful possession.

**§ 103-2 Violations and penalties.**

Any person violating this ~~section~~ bylaw shall be subject to a fine not exceeding ~~\$50~~ \$300 for any one violation thereof.

Town of Cheshire  
PRELIMINARY DRAFT

## Chapter 107 Animals

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire as indicated in article histories. Amendments noted where applicable.]**

### Article I Dog Control

#### § 107-1 Definitions.

As used in this ~~By-Law~~ bylaw, unless the context otherwise indicates, the following terms shall have the meanings indicated:

#### **DOGS**

All animals of the canine species, both male and female.

#### **KEEPER**

Any person, corporation, or society other than the owner, harboring or having in his possession any dog.

#### **OWNERS**

Any person or persons, firm, association or corporation owning, keeping, or harboring or having in his possession any dog.

#### **RUN-AT-LARGE**

Free from physical restraint off of ~~owners'~~ the owner's property and permitted to wander on public or private ways.

#### § 107-2 Dogs at large; care.

- A. Permitting a dog to ~~R~~run -at -large. No owner or keeper shall permit such dog, whether licensed or unlicensed, to run -at -large within the Town of Cheshire, except that a dog may, for the purpose of sporting events such as hunting, field trials, training purposes or working farm dog, be exempt from the restraining order during such period of time as the dog is actually engaged in the event, sport or work. Dogs must be provided with at least 15 feet of rope or chain on which to run when on ~~owners'~~ the owner's property. Dogs may also be on a wire run, in a pen, or in a fenced area. ~~Owner~~ The owner must provide the dog with adequate shelter from the elements and provide the dog with water.
- B. Dogs may be taken from the owners's premises, provided that such is on a leash of not more than eight feet and is under the control of its owner or keeper.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 107-3 Impounding; noise nuisances.**

- A. It shall be the duty of the Animal Control Officer, assisted by all ~~Police Officers~~police officers, to apprehend any dog found unrestrained or running -at -large and to impound such dog in a place suitable for the detention of dogs and kept in a sanitary condition. Any dog so confined and impounded shall be confined for a period of 10 days and may be redeemed by the owner or keeper thereof upon payment to the Town Clerk or the Animal Control Officer of the sum of \$5 for each day so confined or impounded.-
- B. If the owner or keeper of a dog has previously received written notices from the ~~dog officer~~Animal Control Officer or a ~~Police of police~~ officer concerning the continuous barking or howling of his/her dog, it shall be the duty of the ~~dog officer~~Animal Control Officer, assisted by any ~~P~~police officer, to apprehend and impound any dog in order to restore peace when the owner or keeper of their dog is otherwise unavailable, unwilling, or physically unable to restrain their dog from causing a nuisance by continuous barking or howling or to ensure the safety and well-being of that particular dog. A sustained period of 20 minutes shall constitute continuous barking or howling.

**§ 107-4 Enforcement.**

For any violation of the ~~By-Law~~this bylaw, the Animal Control Officer or any ~~Police Officer~~police officer shall utilize the civil infraction procedure established by the General Laws, Chapter 90G, by issuing a written citation to the violator, said citation notifying the violator that within 20 days of the date of citation the violator must either pay the scheduled assessment; or contest responsibility for the infractions by requesting a noncriminal hearing before a magistrate of the ~~district court~~.District Court.

- A. For the first violation of this ~~By-Law~~bylaw within a calendar year, the payment to the Town Clerk of a fine of \$10 shall operate as a final disposition of the case.
- B. For the second violation within a calendar year, the payment of \$15 to the Town Clerk shall operate as a final disposition of the case.
- C. For the third and each subsequent offense within a calendar year, the payment of \$25 to the Town Clerk shall operate as a final disposition of the case.

**§ 107-5 Removal of animal litter.-**

- A. If any animal shall defecate upon any property or area, as hereinafter defined, then the owner, keeper or person then walking or otherwise in charge of said animal shall immediately remove or cause to be removed from said property or area all feces so deposited by said animal. Unless said feces are removed, the owner, keeper or person then walking or otherwise in charge of said animal (or if owner, keeper or person shall be under the age of 18), then the parent of guardian) shall be deemed to have committed a punishable offense.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

B. As used in this section, the following terms shall have the meanings indicated:

**PROPERTY OR AREA**

Any public property or any private property owned by any person or persons who are members of the family of the owner or keeper or the person then walking or otherwise in charge of said animal.

C. The provision of this bylaw shall not apply to a guide animal, hearing animal or service animal while actually engaged in the performance of its trained duties with a disabled person.

D. Penalties. The commission of any offense punishable under this section shall be punishable as set forth § 107-4, a fine of \$10 for the first offense; \$15 for the second offense; and \$25 for each subsequent offense.

**Article II**  
**Dog Licensing**

**§ 107-6 Late fees.**

~~With respect to dog license~~

A. Dog licenses will be available from the Town Clerk's office for the following fees, that in. Proof of current rabies vaccination must also be provided or on file in the Town Clerk's office.

(1) Intact dogs: \$20.

(2) Neutered males/spayed females: \$10.

B. In addition to the license fees required by the General Laws Subsection A above, there shall be assessed a late charge of \$15 with respect to any dog that is not licensed within 60 days after the time that it is required to be licensed.

**Article III**  
**Pasturing Animals on Public Ways**

**§ 107-7 Prohibited conduct.**

No person shall tie or tether horses, cattle or other animals, either with or without a keeper upon a public way.

**§ 107-8 Violations and penalties.**

Any person violating this ~~By-Law~~bylaw shall be subject to a fine of \$20 for each violation thereof.

Town of Cheshire  
PRELIMINARY DRAFT

**Chapter 114**  
**Buildings and Building Construction**

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire as indicated in article histories. Amendments noted where applicable.]**

**Article I**  
**Numbering of Buildings**

**§ 114-1 Uniform numbering system.**

A uniform system of numbering dwellings and principal buildings, as shown on maps prepared by C.T. Male Associates, to be on file in the Assessor's Office, Town Hall, Cheshire, Massachusetts, ~~are~~is hereby adopted and incorporated herein by reference and made a part of this ~~By-Law~~bylaw.

**§ 114-2 Assignment of numbers.**

- A. All properties or parcels of land within the corporate limits of Cheshire shall hereafter be identified by reference to the uniform numbering system herein and such conversion to the numbering system must be completed within 30 days from the effective date of this ~~by-law~~bylaw, or as soon thereafter as the above-mentioned maps are completed.
- B. A separate number shall be assigned for each 10 feet of frontage.
- C. Numerals indicating the official numbers for each principal building or each front entrance to such building shall be placed immediately above, on, or at the side of the main entrance of each building so that the number can be seen plainly from the street line. Whenever any building is situated more than 50 feet from the street line, the number should be placed near the walk, driveway or common entrance to such building, or upon a gate post, fence, tree, post or other appropriate place so as to be clearly discernible from the sidewalk or street line. Such numerals shall be not less than three inches in height and made of a durable and clearly visible material.

**§ 114-3 Administration and enforcement.**

- A. The Town Assessors shall be responsible for maintaining the numbering system. In the performance of this responsibility, they shall be guided by the provisions of § 114-2 of this ~~by-law~~bylaw.
- B. The Town Assessors shall keep a record of all numbers assigned under this ~~by-law~~bylaw and shall enforce the provisions of this ~~by-law~~bylaw.
- C. The Town Assessors shall, at the request of the property owner, assign numbers for any new buildings constructed in the Town.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 114-4 Violations and penalties.**

Violation of this ~~by-law~~law shall be a misdemeanor and may be punished by a fine of \$1 per day. Each separate day such violation is continued shall constitute a separate offense.

**Article II**  
**Stretch Energy Code**

[At the 6-10-2019 ATM, by Art. 9, the Town of Cheshire adopted the Stretch Energy Code for the purpose of regulating the design and construction of buildings for the effective use of energy, pursuant to Appendix 115.AA of the Massachusetts Building Code (780 CMR), including future editions, amendments or modifications thereto, effective 7-1-2019, a copy of which is on file with the Town Clerk.]

**Chapter 120**  
**Cemeteries**

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

**§ 120-1 Ownership of and title to lots.**

- A. Upon full payment of the purchase price of a lot or grave, the Town will record and issue a deed under its seal as evidence of ownership of the lot. Lots or fractional lots, for which lot deeds have been issued by the Town, will not thereafter be divided or transferred except by consent of the Cemetery Commission.
- B. The title to a cemetery lot invests in the owner the right to use such lot for burial purposes only, for themselves, their heirs, or such person as they may choose to admit, provided such admission is free of charge and in accordance with the ~~C~~cemetery rules and regulations.

**§ 120-2 Interments.**

- A. All interments in lots shall be restricted to the owner, and his heirs and his assignees. Permission in writing from a lot owner or his heirs must accompany all requests for the burial of any other person in the family lot.
- B. All interments, or removals, except the installation of vaults, will be done by the employees of the ~~C~~cemetery under the direction of the Cemetery Commission.
- C. No interments shall be made in; or removals made from the ~~C~~cemetery, until the Cemetery Commission has been furnished with such permits as required by ~~S~~state and ~~L~~local law, and also with an interment or removal order properly signed by the lot owner or his legal representative.

## **Town of Cheshire**

### **PRELIMINARY DRAFT**

- D. The lot owner or funeral director shall designate the location of the grave on the lot to the Cemetery Commissioner, and any change of location after the opening of the grave has begun shall be at the expense of the lot owner.
- E. A permanent type of outside container shall be required.
- F. A second burial will not be permitted in a lot that is not paid for, or in a lot against which there are outstanding charges to the owner.
- G. Permission for interments on Saturdays will be granted upon the payment of an extra charge.
- H. No interments will be permitted on Sundays, and all legal State and Federal holidays.
- I. In keeping with long-standing past practice, the Commission shall hereby formalize the policy of prohibiting winter season burials in Town Cemeteries. The Commission, by majority vote of the Commission, shall be the sole authority responsible for the seasonal opening and closing of Town Cemeteries for the purpose of burials. Generally, the Cemeteries are closed December 1, but the Commission pledges to keep the Cemeteries open as long as seasonal weather conditions permit. Once there has been one burial denied due to winter conditions, no subsequent burials will be allowed, in order to eliminate any discrimination. Once that first denial has occurred, the Cemeteries will remain closed until the third week of April, again in keeping with long-standing practice.

#### **§ 120-3 Stone or monument work.**

- A. No memorial of any type may be placed on any lot on which there are charges outstanding, or upon any lot that has not been placed under ~~Perpetual Care~~ perpetual care.
- B. All contractors and outside workmen doing work of any type in the cemetery will be under the direct charge of the Cemetery Commission. All work must be done during regular working hours unless prior permission has been given by the Cemetery Commission.
- C. Every monument or other memorial shall be set on a four-foot-deep concrete foundation that extends on four sides a minimum of six inches so as to eliminate clipping of grass around the monument.
- D. The Town reserves the right to refuse permission to erect any monument work not in keeping with the good appearance of the cemeteries.
- E. No curbing, fencing, steps or any other type of structure, except conventional memorials, may be placed on any lot without the permission of the Cemetery Commission.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- F. Stone, monument work, or foundations thereof, shall not be relocated without the permission of the lot owner and the Cemetery Commission.
- G. On single graves or lots, monuments must not exceed three feet in overall height and the base of the monument must not exceed 14 inches in width and two feet in length. On all multiple graves or lots, monuments must not exceed three feet in overall height and the base of the monument must not exceed 14 inches in width and five feet in length. All monuments must be on bases.
- H. No lot shall have more than one memorial projecting above grade. Individual graves in a lot may be indicated by flush-type markers or monuments, but not both.
- I. Monuments will be in line with other lots.

**§ 120-4 Right of entry.**

The Cemetery reserves the right for its workmen and those necessary persons to the performance of normal cemetery operations to enter or cross over any lot in the cemetery in the performance of such duties.

**§ 120-5 Limitation on Town liability.**

The Town assumes no liability for damages caused by others.

**§ 120-6 Vegetation and decorations.**

- A. No shrubbery of any form is allowed on cemetery lots.
- B. If any tree or shrub already situated on any lot shall by means of ~~their~~its roots or branches become detrimental to or encroach upon adjacent lots, avenues or paths, or become unsightly, the Cemetery Commission shall have the right to remove the tree or shrub.
- C. Only one item of decoration may be placed at the family headstone. All artificial flowers are to be placed in an acceptable container. Glass containers of any kind are not permitted.
- D. Winter flowers and other embellishments must be removed by May 1. Summer flowers and other embellishments must be removed by October 1.

**§ 120-7 Residency requirements.**

Sale of lots is restricted to Cheshire residents and former residents who have lived in Cheshire for 10 or more years.



Town of Cheshire  
PRELIMINARY DRAFT

# Chapter 131

## Farming

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

**§ 131-1 Legislative purpose and intent.**

The purpose and intent of this B~~by~~law is to state with emphasis the R~~right~~ to F~~farm~~ accorded to all citizens of the C~~ommonwealth~~ under Article 97 of the Articles of Amendment of the Massachusetts Constitution and all S~~state~~ statutes and regulations thereunder, including but not limited to MGL Chapter~~c.~~ 40A, Section-§ 3, Paragraph 1; ChapterMGL c. 90, Section-§ 9; ChapterMGL c. 111, Section-§ 125A; and ChapterMGL c. 128, Section-§ 1A. We the citizens of Cheshire restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution ("Home Rule Amendment"). This General-Bylaw~~general bylaw~~ encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Cheshire by allowing agricultural uses and related activities to function with minimal conflict with abutters and Town agencies.

**§ 131-2 Definitions.**

- A. The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of agriculture.
- B. The words "farming" or "agriculture" or their derivatives shall include, but not be limited to, the following:
  - (1) Farming in all its branches and the cultivation and tillage of the soil;
  - (2) Dairying;
  - (3) Production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;
  - (4) Growing and harvesting of forest products upon forest land, and any other forestry, lumbering, or tree growing operations;
  - (5) Raising of livestock, including horses;
  - (6) Keeping of horses as a commercial enterprise;
  - (7) Keeping and raising of poultry, swine, cattle, sheep, ratites (such as emus, ostriches, and rheas) and camelids (such as llamas, alpacas, and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

C. "Farming" shall encompass activities including, but not limited to, the following:

- (1) Operation and transportation of slow-moving farm equipment over roads within the town;
- (2) Control of pests, including, but not limited to, insects, weeds, predators, and disease organisms of plants and animals;
- (3) Application of manure, fertilizers, and pesticides;
- (4) Conducting agriculture-related educational and farm-based recreational activities, provided that the activities are related to marketing the agricultural output or services of the farm;
- (5) Processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand, including signage thereto;
- (6) Maintenance, repair or storage of seasonal equipment or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products;
- (7) On-farm relocation of earth and the clearing of ground for farming operations;
- (8) Construction and use of farm structures and facilities for the storage of animal wastes, farm equipment, pesticides, fertilizers, and agricultural products, for the sale of agricultural products, and for the use of farm labor, as permitted by local and state building codes and regulations, including construction and maintenance of fences.

**§ 131-3 Right to farm declaration.**

The Right to Farm is hereby recognized to exist in the Town of Cheshire. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of the Bylaw are intended to apply exclusively to these agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right to Farm Bylaw shall be deemed as acquiring any interest in land, or imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning bylaw. This Bylaw does not supersede local, state, or federal laws or regulations or private covenants.

**§ 131-4 When effective.**

This Town by-law becomes effective upon approval by the Massachusetts Attorney General.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 131-5 Disclosure.**

- A. Within 30 days after this bylaw becomes effective, the following notice shall be prominently posted at the Town Hall and the Town's additional five posting sites and shall be made available for inspection and copying at the office of the Town Clerk:

"It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This notice is to inform buyers or occupants that the property they are about to buy or occupy lies in a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors. Buyers or occupants are also informed that the location of property within the Town of Cheshire may be affected by agricultural operations."

- B. The Farm Commission, with the approval of the Board of Selectmen, may choose to employ additional disclosure methods, including, but not limited to, mailings and signage.

**§ 131-6 Resolution of disputes.**

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Agricultural Commission. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Zoning Enforcement Officer or Board of Selectmen may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the referring authority within an agreed-upon time frame. The Board of Health, except in cases of imminent danger or public health risk, may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the Board of Health within an agreed-upon time frame.

**§ 131-7 Severability.**

If any part of this Town ~~By-law~~ bylaw is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this ~~by-law~~ bylaw. The Town of Cheshire hereby declares the provisions of this ~~by-law~~ bylaw to be severable.

## Chapter 155

### Mobile Home Parks

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

**§ 155-1 Mobile Home Park Rent Control Board.**

- A. Composition. There is hereby established a "Mobile Home Park Rent Control Board" consisting of five members representing the public interest, none of whom to be a ~~Mobile Home Park~~ mobile home park tenant or ~~Mobile Home Park land-owner~~ mobile home park landowner, to be appointed

**Town of Cheshire**  
**PRELIMINARY DRAFT**

by the Board of Selectmen. The members in the first instance shall be appointed for terms of one, two, three, four, and five years. Upon expiration of a term of office, the subsequent term shall be for a period of five years.

- B. Any action taken by the Board shall require a majority vote thereof. Within seven days after the appointment and confirmation of the Board as aforesaid, the Board shall meet and elect one of its members as Chairperson to serve in that capacity for a term of one year.
- C. Members of the Mobile Home Park Rent Control Board shall receive no compensation for their services.

**§ 155-2 Definitions.**

- A. For the purpose of this ~~by-law~~bylaw, the following terms, phrases, words and their derivations; shall have the meanings given herein, unless the context in which they are used clearly requires a different meaning.

**CAPITAL IMPROVEMENT**

Any substantial rehabilitation, addition or improvement which appreciably adds to the value of the property or prolongs its life, or both, but not including ordinary maintenance and repairs.

**MOBILE HOME**

A dwelling unit built on a chassis and containing complete electrical, plumbing and sanitary facilities, and designed to be installed on a temporary or a permanent foundation for permanent living quarters, but shall not include modular homes set upon permanent foundations.

**MOBILE HOME PARK**

A park licensed by the Board of Health pursuant to ~~Massachusetts General Laws, Chapter 140,~~  
Section MGL c. 140, § 32B.

**RENT BOARD and BOARD**

The Mobile Home Rent Control Board as established herein.

**RULES AND REGULATIONS**

Rules and regulations as promulgated by the Board.

- B. "Shall" is mandatory; "~~M~~may" is permissive.

**§ 155-3 Board powers and duties.**

- A. The Board shall regulate ~~t~~rents, and shall promulgate such policies, rules and regulations as will further the provisions of Chapter 392 of the Acts of 1987, and shall recommend to the Town

**Town of Cheshire**  
**PRELIMINARY DRAFT**

Meeting for adoption such ~~by laws~~bylaws as may be necessary to carry out the purposes of said Chapter 392.

- B. The Board may make rules and regulations, compel attendance of persons and production of papers and information, and issue appropriate orders which shall be binding on both the owner and tenant of such ~~Mobile Home Park~~mobile home park accommodations.
- C. The Board may refer any relevant matter to the appropriate Town department or agency for further action. The Board may, at the request of any ~~Mobile Home Park~~mobile home park owner, render a binding opinion as to the impact of proposed capital improvements on the rents.

**§ 155-4 Standards for adjusting rents.**

- A. The Board may make individual or general adjustments, either upward or downward, as may be necessary to assure that rents for ~~Mobile Home Park~~mobile home park accommodations are established at levels which yield to owners a fair net operating income for such units.
- B. Fair net operating income shall be that income which will yield a return after all reasonable operating expenses, on the fair market value of the property, equal to the debt service rate generally available from institutional first mortgage lenders or such other rates of return as the Board, on the basis of evidence presented before it, deems more appropriate to the circumstances of the case.
- C. Fair market value shall be the assessed valuation of the property or such other valuation as the Board, on the basis of evidence presented before it, deems more appropriate to the circumstances of the case.
- D. No rent adjustment shall be effective without the prior approval of the Board.

**§ 155-5 Summary process.**

The Board shall regulate standards for use or occupancy of ~~Mobile Home Park~~mobile home park accommodations, and shall regulate eviction of tenants at ~~Mobile Home Parks~~mobile home parks, and may issue orders which shall be defenses to actions of ~~Summary Process~~summary process for possession.

**§ 155-6 Review.**

- A. The Board and its actions shall be subject to the provisions of Massachusetts General Laws; Chapter 30A (Administrative Procedures Act) as if the Board were an agency of the Commonwealth of Massachusetts.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**B. Jurisdiction.**

- (1) The District Court of Berkshire County shall have original jurisdiction, concurrently with the Superior Court, of all petitions for review brought pursuant to ~~Section 14 of Chapter 30A of the General Laws~~ MGL c. 30A, § 14.
- (2) The Superior Court and the District Court of Berkshire County shall have concurrent jurisdiction to enforce the provisions of the Act, and any violations thereof.

**§ 155-7 Violations and penalties.**

Violations of this ~~by-law~~ bylaw or any order of the Board shall be punished by a fine of not more than \$1,000 for any one offense.

**§ 155-8 Severability.**

If any provision of the Act of the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

**Attachments:**

Acts of 1987, Chapter 392

## Chapter 167

### Noise

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

**§ 167-1 Purpose.**

Whereas, excessive, continuous sound is a serious health hazard to the public health, welfare, safety and the quality of life; and ~~W~~whereas a substantial body of science and technology exists by which excessive, continuous sound may be substantially abated; and ~~W~~whereas the people have a right to; and should be ensured an environment free from excessive, continuous sound, it is the policy of the Town of Cheshire to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade quality of life.

**§ 167-2 Applicability.**

This bylaw shall apply to the control of sound originating from stationary and mobile sources, as described herein, within the limits of the Town of Cheshire.

**§ 167-3 Unlawful noise prohibited.**

It shall be unlawful for any person or persons to create, assist in creating, continue or allow to continue any excessive, continuous, unnecessary, or unusually loud noise which either annoys, disturbs, injures,

**Town of Cheshire**  
**PRELIMINARY DRAFT**

or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the Town of Cheshire- which shall be defined herein as a "noise disturbance." The following acts are declared to be loud, disturbing, injurious, unnecessary and unlawful noises in violation of this section, but this enumeration shall not be exclusive, ~~namely:~~

**§ 167-4 Specific prohibited acts.**

No person shall cause, suffer, allow, or permit the following acts in such a manner so as to annoy or disturb the reasonable quiet, comfort or repose of persons across a residential property line:

- A. Operating, playing, or permitting the operation or playing of any radio, television, phonograph, amplified instruments or similar device that reproduces or amplifies sound for a sustained duration, in such a manner as to create a noise disturbance, if outside the parameters of any license or permit;
- B. Using or operating any loudspeaker, public address system, or similar device for a sustained duration, such that the sound ~~there from~~therefrom creates a noise disturbance;
- C. Owning, possessing, or harboring any animal or bird that frequently and for sustained duration; generates sounds that creates a noise disturbance;
- D. The operation of a motorized vehicle(s) that frequently and for a sustained duration; generates sound that creates a noise disturbance.

**§ 167-5 Exemptions.**

None of the terms or prohibitions of the previous section shall apply or be enforced against any of the following activities:

- A. Agricultural activities. Noise caused by agricultural, farm-related, or forestry-related activities as defined by MGL ~~Chapter~~c. 128, Section ~~§~~1A, including, but not limited to, the operation of farm equipment, sawmills, harvesting equipment, and noises from farm animals.
- B. Construction activities. Noise from construction or business vehicles and equipment, provided that all motorized equipment used in such activity is equipped with functioning mufflers.
- C. Domestic power equipment. Noise from domestic power tools, lawn mowers, chainsaws, leaf blowers, wood splitters, air compressors and other similar equipment.
- D. Emergency vehicles. Any police, fire, ambulance or other emergency response vehicle while engaged in necessary emergency situations.
- E. Highway and utility maintenance and construction. Necessary excavation or repairs of bridges, streets, or highways, or any public utility installation by or on behalf of the Town, or any public utility or any agency of the Commonwealth of Massachusetts.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- F. Public address. ~~Non-commercial~~Noncommercial public speaking and public assembly activities subject to federal and state constitutional protection.
- G. Alarm systems. Any sound generated from a device used in an alarm system when operating as an alert to an actual emergency situation and not a false alarm due to malfunction, misuse or lack of maintenance.
- H. Religious/~~m~~Municipal uses. Any bell or chime or other sound generated from a school, municipal facility or place of worship.
- I. Municipal events. Noise generated from municipally sponsored or approved celebrations or events.
- J. Snow removal activities. Noise from snow blowers, snow throwers and snow plows.

**§ 167-6 Enforcement procedures.**

- A. Enforcement of this bylaw is through the Cheshire Board of Selectmen and the Cheshire Police Department. The municipal enforcement officer shall initially determine the extent and nature of any violations of the bylaw, and having determined that such violations have occurred or are continuing to occur, shall serve a written ~~N~~notice of Violation on the offender. A ~~N~~notice of Violation is deemed served on the day it is received, if served by hand or by certified mail, return receipt requested, and is deemed served on the third day after mailing, if served by first class mail, postage prepaid.
- B. Each ~~N~~notice of Violation shall state that the Board of Selectmen shall hold a public hearing, at which the offender shall be allowed to appear and present evidence in his behalf, to determine if the violation(s) set forth in the notice constitutes a violation of the bylaw. The municipal enforcement officer responsible for issuing the initial ~~N~~notice of Violation shall also be present at the hearing. After listening to the evidence presented, the Board of Selectmen shall determine whether or not to issue a ~~C~~cease and Desist Order~~desist order~~. If the ~~C~~cease and Desist Order~~desist order~~ is violated, the offender shall be subject to the fines as set forth below and/or referred to the appropriate ~~C~~court. Notice of such a public hearing shall be served on the offender in the manner set forth for the above service of a ~~N~~notice of Violation, such hearing to be held no later than 25 days from the date that such notice is served.

**§ 167-7 Violations and penalties.**

The first violation of this bylaw shall be punished by a fine of not less than \$200. The second violation of this bylaw shall be punished by a fine of not less than \$250. Further violations shall be punished by a fine of \$300. Each such act which either continues or is repeated more than 1/2 hour after issuance ~~or~~of a written ~~N~~notice of Violation of this bylaw shall be a separate offense. If the violation occurs on the premises of rental property where there is a ~~non-resident~~nonresident owner, the owner must also ~~by~~be notified in writing that the violation has occurred.



**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 167-8 Other remedies.**

If the person or persons responsible for an activity which violates ~~Section 2~~ § 167-3 and/or § 167-4 cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

**§ 167-9 Severability.**

If any provision of this bylaw is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this bylaw shall not be invalidated.

## **Chapter 182**

### **Solid Waste**

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire as indicated in article histories. Amendments noted where applicable.]**

#### **Article I**

#### **Recycling**

**§ 182-1 Separation required.**

The Town of Cheshire ~~adopted~~ adopts this as a ~~General By-Law~~ general bylaw to implement a program of recycling in conjunction with ordinary waste disposal; residents and businesses of the Town of Cheshire shall separate waste material into the following categories before depositing same for disposal:

A. ~~Glass~~ Plastic, glass and cans.

B. Paper.

C. ~~Other~~ Electronics.

D. Scrap metal.

E. Household demolition waste.

**§ 182-2 Violations and penalties; Board of Health regulations.**

If no separation takes place, waste material shall not be accepted at the disposal location. Violators shall be subject to fines not exceeding \$300 per violation. The Board of Health will be responsible for promulgation of regulations and enforcement consistent with these provisions and shall have the authority to add, alter or delete items to be separated.

**§ 182-3 Implementation by Board of Health.**

This ~~by-law~~ bylaw shall be implemented by the Board of Health by posting and publishing a notice detailing procedures and the starting date when separation shall commence.

**Town of Cheshire**  
**PRELIMINARY DRAFT**  
**Article II**  
**Use of Town Compactor**

**§ 182-4 Control and supervision.**

The Board of Health shall have control, supervision and responsibility for the operation of the Town ~~Compactor~~ and related activities other than the supervision of the Town ~~Compactor~~-~~Attendants~~compactor attendants, who shall fall under the direct supervision of the Board of Selectmen or ~~their~~its designee.

**§ 182-5 Use requirements and restrictions.**

All Town residents desiring to enter and utilize the Town ~~Compactor~~ shall be required to purchase a sticker from the Board of Health. No person shall deposit any trash at the Town ~~Compactor~~ site without purchasing a sticker from the Board of Health. All trash shall be put into bags issued by the Board of Health before being deposited at the Town ~~Compactor~~ site. No disposal of any kind shall be allowed when the Town ~~Compactor~~ is closed.

**§ 182-6 Violations and penalties.**

Violation of any section of the ~~By-Law~~this bylaw shall be punishable by a fine of \$100 for the first offense, and a fine of \$200 for the second and subsequent offenses.

**§ 182-7 Revocation of stickers.**

The Board of Health, with the approval of the Board of Selectmen, may revoke a person's sticker for repeated violations of this ~~By-Law~~bylaw or the rules and regulations established by the Town's acceptance in 1990 of the Solid Waste Management Program, so-called.

## Chapter 188

# Streets and Sidewalks

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire as indicated in article histories. Amendments noted where applicable.]**

**Article I**  
**Placement of Snow and Ice on Public Ways**

**§ 188-1 Placement on public ways prohibited.**

No person shall shovel, plow, push or throw snow out into a public way.

**§ 188-2 Violations and penalties; enforcement.**

After written notice by the Cheshire Highway Department or by the Board of Selectmen or by the Cheshire Police Department, anyone violating this ~~section~~bylaw shall be subject to a fine of \$50 for a first offense and a fine of \$100 for each subsequent offense. Prosecution of an offense under this ~~section~~bylaw shall be pursuant to the provisions of ~~Mass. General Laws, ch. MGL c. 40, sec. § 21D (non-criminal dispositions)-noncriminal disposition~~. The imposition of a penalty under this ~~section~~bylaw shall not relieve the owner from any civil liability.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**Article II**  
**Snow Removal**

**§ 188-3 Duty of property owner to clear sidewalks.**

The owner of premises, and his tenant or licensee, shall, as soon as practical after any snowfall or ice storm, cause all public sidewalks abutting said premises to be cleared reasonably of such snow and/or ice, and said sidewalk to be made usable by the public with as much safety as possible under the circumstances.

**§ 188-4 Violations and penalties.**

Whoever violates any provision of the ~~By-law~~this bylaw, the violation of which is subject to a fine not to exceed \$50 for each offense, may be penalized by a noncriminal disposition as provided in ~~General Laws Chapter~~MGL c. 40, Section § 21D.

**Chapter 194**  
**Taxation**

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire as indicated in article histories. Amendments noted where applicable.]**

**Article I**  
**Recreational Marijuana Excise Tax**

**§ 194-1 Imposition and payment of tax; amount.**

In accordance with Mass Acts 2017, Chapter 55, Section 13, and pursuant to MGL ~~Chapter c.~~ 64N, ~~Section § 3~~, the Town of Cheshire hereby adopts a 3% gross sales tax applicable to marijuana retailers. The marijuana retailer shall pay the local sales tax imposed under this bylaw to the Commissioner of Revenue at the same time and in the same manner as the sales tax due to the ~~C~~ommonwealth.

Town of Cheshire  
PRELIMINARY DRAFT

## Chapter 205 Vehicles and Traffic

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

### Article I Operation of Vehicles

**§ 205-1 Driving within marked lanes; operation of motorcycles.**

A. When any roadway is divided into lanes, the driver of a vehicle shall so drive that the vehicle shall be entirely within a single lane, and he shall not move from the lane in which he is driving until he has first ascertained ~~is~~if such movement can be made with safety.

B. The operators of motorcycles shall not ride abreast of more than one other motorcycle, shall ride single file when passing, and shall not pass any other motor vehicle within the same lane, except another motorcycle.

**§ 205-2 Driving in right lane.**

Upon all roadways the driver of a vehicle shall drive in the lane nearest the right side of the roadway when said lane is available for travel, except when overtaking another vehicle or when preparing for a left turn. When the right lane has been constructed or designated for purposes other than ordinary travel, a driver shall drive his vehicle in the lane adjacent to the right lane, except when overtaking another vehicle or when preparing for a left or right turn; provided, however, that a driver may drive his vehicle in such right lane if signs have been erected by the Department of Highways permitting the use of such lane.

**§ 205-3 Overtaking other vehicles.**

~~The~~A. Except as herein otherwise provided, the driver of any vehicle overtaking passing another vehicle proceeding traveling in the same direction shall pass at drive a safe distance to the left thereof, and shall not cut in ahead of such other vehicle and shall not return to the right until safely clear of it: the overtaken vehicle; and, if the way is of sufficient width for the two vehicles to pass, the driver of the leading one shall not unnecessarily obstruct the rear other. If it is not possible to overtake a bicycle or other vehicle at a safe distance in the same lane, the overtaking vehicle shall use all or part of an adjacent lane if it is safe to do so or wait for a safe opportunity to overtake. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right when practicable in favor of the overtaking vehicle, on suitable and audible signal being given by the driver of the overtaking vehicle, visible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

**Town of Cheshire**

**PRELIMINARY DRAFT**

B. The driver of a vehicle may, if the roadway is free from obstruction and of sufficient width for two or more lines of moving vehicles, overtake and pass upon the right of another vehicle when the vehicle overtaken is:

(1) Making or about to make a left turn;

(2) Upon a one-way street; or

(3) Upon any roadway on which traffic is restricted to one direction of movement.

**~~§ 205-4 Overtake only when there is a space ahead.~~**

~~The driver of a vehicle shall not overtake and pass a vehicle proceeding in the same direction unless there is clear space ahead on the right side of the roadway to permit the overtaking to be completed without impeding the safe operation of any vehicle ahead or without causing the driver of any such vehicle to change his speed or after his course, except as provided in the following section.~~

**~~§ 205-5 Driver to give way to overtaking vehicle.~~**

~~The driver of a vehicle when about to be overtaken and passed by another vehicle approaching from~~

**§ 205-4 Obstructing traffic.**

- A. No person shall drive in such a manner as to obstruct unnecessarily the normal movement of traffic upon any highway. Officers are hereby authorized to require any driver who fails to comply with this section to drive to the side of the roadway and wait until such traffic as has delayed has passed.
- B. No driver shall enter an intersection or marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalks and on the right half of the roadway to accommodate the vehicle he is operating without obstructing the passage of other vehicles ~~of~~ or pedestrians, notwithstanding any traffic control signal indication to proceed.

**§ 205-5 Following too closely.**

The driver of a vehicle shall not follow another vehicle otherwise than is reasonable and prudent, having due regard to the speed of such vehicle and the traffic upon and condition of the highway.

**§ 205-6 Distance between slow vehicles.**

Upon roadways less than 27 feet wide and upon which vehicular traffic is permitted to operate in both directions, the driver of any slow-moving commercial vehicle when traveling outside of a business or residential district shall not follow another slow-moving commercial vehicle within 200 feet, but this shall not be construed to prevent such slow-moving commercial vehicle from overtaking and passing another slow-moving commercial vehicle. This section shall not apply to funerals or other lawful processions.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 205-7 Care in starting, stopping, turning or backing.**

Except as otherwise provided in Article VI, Section 2A, The driver of any vehicle before starting, stopping, turning from a direct line, or backing shall first see that such movement cannot be made in safety; or if it interferes with unduly with normal movement of other traffic, said driver shall wait for a more favorable opportunity to make such a movement. If the operation of another vehicle should be affected by a stopping or turning movement, the driver of such other vehicle shall be given a plainly visible signal, as required by Chapter MGL c. 90, Section § 14B of the General Laws (Ter. Ed.).

**§ 205-8 Obedience to isolated stop signs.**

~~Every driver of a vehicle, railway car or other conveyance, approaching an intersection of ways, where there exists facing him an official sign bearing the word "STOP", or a flashing red signal, said sign or signal having been erected in accordance with the written approval of the Department and such approval being in effect shall, in the case of a flashing red signal, before proceeding through the intersection, bring such vehicle, railway car or other conveyance to a complete stop at the nearer line of the street intersection and in the case of a stop sign at a point is not so marked, then a place between the said "STOP" sign and near the line of the street intersection. In the case of a line of two or more vehicles approaching such "STOP" sign or flashing red signal indication, the drivers of the second and third vehicles in line in any group shall not be required to stop more than once before proceeding through the intersection. This section shall not apply when the traffic is otherwise directed by an Officer or by a lawful traffic-regulating sign, signal or device or as provided in Section 21(c) of Article IV of these rules.~~

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign or a flashing red signal indication shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

**§ 205-9 Sounding of horn.**

The driver of a vehicle shall give an audible warning with his horn or other suitable warning device whenever necessary to ~~insure safe operation~~ensure safe operation, provided that no person operating a motor vehicle shall sound a bell, horn or other device so as to make a harsh, objectionable or unreasonable noise in violation of other Town bylaws.

**§ 205-10 Driving on road surface under construction or repair.**

No operator shall enter upon the road surface of any highway or section thereof when, by reason of construction, surface treatment, maintenance or the like, or because of some unprotected hazard, such road surface is closed to travel, and one or more signs, lights or signals have been erected to indicate that all or party of the road surface of the highway is not to be used, or when so advised by ~~an officer, watchman,~~a member of ~~the~~ highway crew or employee of the ~~Department~~Town of Cheshire, either audibly or by signals.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 205-11 Driving on sidewalks prohibited.**

The driver of a vehicle shall not drive upon any sidewalk except at a permanent or temporary driveway.

**§ 205-12 Emerging from alley or private driveway.**

The driver of a vehicle emerging from a private road, driveway or garage shall stop such vehicle immediately prior to driving upon the sidewalk area extending across such driveway or garage, and where no such sidewalk exists the stop shall be made at the building or property line as the case may be, and upon entering the roadway shall yield the right of way to vehicles approaching on the roadway.

**§ 205-13 Certain turns prohibited.**

The driver of a vehicle or other conveyance shall not make a turn from the way in which he is driving into another way or driveway, at any point in the highway, where such movement is prohibited by signs.

**§ 205-14 Driving or parking on channelizing island.**

No person shall drive a motor vehicle upon any channelizing island, ~~as defined in these rules,~~ unless directed to do so by a police officer.

**§ 205-15 Obedience to traffic signs, signals and markings.**

The driver of any vehicle or of any street car shall obey the instructions of any official traffic control sign, signal, device, marking or legend unless otherwise directed by a police officer.

**§ 205-16 Rights and duties of drivers in funerals or other processions.**

~~Any driver in a funeral procession shall comply with the requirements of MGL c. 85, § 14A.~~

~~A. It shall be the duty of each driver in funeral or other procession to keep as near to the right edge of the roadway as is feasible and to follow the vehicle ahead as closely as practical and safe.~~

~~B. At an intersection where a traffic control signal is operating the driver of the first vehicle in a funeral or other procession shall be the only one required to stop for a red or red and yellow indication.~~

~~C. At an intersection where a lawful isolated stop sign or signal exists, the driver of the first vehicle in a funeral or other procession shall be the only one required to stop before proceeding through the intersection.~~

**§ 205-17 Workers and equipment in highway.**

Whenever traffic signs are erected or warning lights are displayed in or adjacent to a highway to notify of the presence of men and equipment, in such highway, every motorist shall regulate the speed of his vehicle in a manner and to a degree consistent with the particular condition.

**§ 205-18 Vehicle operation at crosswalks.**

A. When traffic control signals are not in place or not in operation, the driver of a vehicle, which for the purpose of this ~~Article~~ section shall include bicycles, shall yield the right of way, slowing down or stopping if need be ~~to so to~~ yield, to a pedestrian crossing the roadway within a crosswalk marked in accordance with standards established by the Department of Highways if the pedestrian

**Town of Cheshire**  
**PRELIMINARY DRAFT**

is on that half of the traveled part of the way upon which the vehicle is traveling or when the pedestrian approaches from the opposite half of the roadway to within ~~five~~10 feet of that half of the traveled part of the roadway upon which the vehicle is traveling.

- B. No operator of a vehicle shall pass any other vehicle which has been stopped at a marked crosswalk to permit a pedestrian to cross a way, nor shall any operator enter a marked crosswalk until there is sufficient space on the other side of the crosswalk to accommodate the vehicle he is operating, notwithstanding any traffic control signal indication to proceed.

**§ 205-19 Duty to exercise due care.**

The provisions of ~~Article VI~~this article shall in no way abrogate the provisions of ~~Chapter~~MGL c. 90, Sections ~~§§ 14 and 14A of the General Laws (Ter. Ed.)~~, which provide: "Precautions for Safety of Other Travelers" and for the "Protection of Blind Persons"Pedestrians Crossing or Attempt to Cross Ways." Furthermore, notwithstanding the provisions of these regulations, every operator of a vehicle shall exercise due care to avoid colliding with any pedestrian upon the roadway and shall give warning by sounding the horn when necessary and shall exercise proper precautions which may become necessary for safe operation.

**Article II**  
**Administration and Enforcement**

**§ 205-20 Exemptions.**

The provisions of these rules shall not apply to persons acting in conformity with the direction of ~~an~~a police officer, to persons or drivers actually engaged in work upon a highway closed to travel or under construction or repair when the nature of their work necessitates a departure from any part of these rules, to officers when engaged in the performance of their public duties which necessitates a departure from any part of these rules, nor to drivers of emergency vehicles while operating in an emergency and in performance of public duties which necessitate a departure from any part of these rules. These exemptions shall not, however, protect the driver of any vehicle from the consequences of a reckless disregard of the safety of others.

- ~~B. The provisions of Article VI section 3 (a) shall not apply to persons operating federal, state or municipality owned vehicles carrying such dangerous as may be required during an existing or impending emergency nor shall they apply to any vehicle carrying a flammable liquid of a type which is required for the propulsion of the vehicle and is in a portable container in a quantity not exceeding 15 gallons or in a tank which is an integral part of the vehicle, nor shall it apply to devices in a quantity not exceeding 12 devices to be used for the sole purpose of warning other motorists of an emergency condition. The provisions of Article VI Section 3 (a) shall not apply to persons operating a vehicle transporting radioactive material when such radioactive material is such that it is exempt from all I.C. specification packaging, marking, and labeling because of type and quantity nor shall they apply to persons operating a vehicle transporting radioactive material which~~



**Town of Cheshire**  
**PRELIMINARY DRAFT**

~~consists solely of manufactured articles, other liquids, when the gross weight of such radioactive material and its container does not exceed 500 pounds per vehicle.~~

**§ 205-21 Owner prima facie responsible for violations.**

If any vehicle is found upon any street or highway in violation of any provision of these rules and orders and the identity of the driver cannot be determined, the owner or the person in whose name such a vehicle is registered shall be held prima facie responsible for such violations.

**§ 205-22 Obedience to police.**

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer in regard to the direction, control or regulation of traffic. Any person acting in conformity with any such order or direction shall be relieved from the observance of any provision of these rules with which the order or direction may conflict.

~~**Compliance with official signs required.**~~

~~No person shall disobey the instructions of any official sign, signal, marking or marker.~~

**§ 205-23 Violations and penalties.**

Any person convicted of a violation of any of the provisions of Article VII of these Rules and Regulations shall be punished as provided in Chapter MGL c. 90, Section 18A of The General Laws (Ter. Ed.). ~~§ 18A~~. Any person convicted of a parking violation of any provision of these rules shall be punished as provided in Chapter MGL c. 90, Section 20A of the General Laws (Ter. Ed.). Any person convicted of a violation of any other rule made hereunder shall be punished by a fine of not more than \$20 for each offense, except that a person convicted of a violation of the provisions of Article VI, Section 3 a, b, c and d of these Regulations shall be punished by a fine of not more than \$500 for each offense.

## Chapter 210

### Vehicles, Junk and Unregistered

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire. Amendments noted where applicable.]**

**§ 210-1 Open storage prohibited.**

No person or entity, corporate or otherwise, as owner or as one in control of premises, shall keep in the open in any zoning district of the Town of Cheshire, any junk or unregistered vehicle except as outlined in this Town Bylaw.

**§ 210-2 Definitions.**

As used in this bylaw, the following terms shall have the meanings indicated:

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**VEHICLE**

~~Defined as an automobile, truck, van, snowmobile, all-terrain vehicle, boat, trailer or any other motorized or non-motorized boat or vehicle requiring State registration to be operated on public ways, lands or waterways.~~

**JUNK VEHICLE**

Any vehicle that is inoperable, worn out, cast off, or discarded and is ready for dismantling or destruction, or that has been collected or stored for salvage, or for stripping, in order to make use of parts thereof.

**UNREGISTERED VEHICLE**

A vehicle that is operable and able to meet requirements for ~~S~~state registration, but currently is not registered with the appropriate ~~State Registry~~state registry.

**VEHICLE**

An automobile, truck, van, snowmobile, all-terrain vehicle, boat, trailer or any other motorized or nonmotorized boat or vehicle requiring state registration to be operated on public ways, lands or waterways.

**§ 210-3 Limits on storage.**

- A. Any property owner may have no more than two junk vehicles and they must be housed behind fencing or natural screening, or garaged out of view of the public and abutting property owners. No more than one unregistered vehicle shall be kept in view of the public or abutting property owners for a period of more than six months. In addition, no more than two unregistered vehicles shall be garaged or kept behind fencing, or natural screening.
- B. Any property owner using the property for agriculture or horticulture may maintain up to six operable, unregistered vehicles used for servicing the property. These allowances are in addition to those afforded all other property owners. When not in use, all of the allowed vehicles shall be properly screened from public and abutters' view.

**§ 210-4 Request for variance.**

Any property owner seeking relief from this ~~by-law~~bylaw must file a written request for such to the Board of Selectmen and must prove financial hardship ~~is if~~ relief is to be granted. The Board of Selectmen, by a simple majority, will determine whether relief shall be granted. This determination will be in writing to the applicant. The Board of Selectmen shall hold a public hearing on the request no later than 80 days after the receipt of the written request. This hearing will be in accordance with Massachusetts General Law. Any appeal by the applicant shall be in accordance with Massachusetts General Law.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 210-5 Violations and penalties.**

In addition to any other remedies provided for in law or equity, a ~~Police Officer~~police officer may ticket any vehicle in violation of this ~~article~~bylaw, and, after a period of 14 days, shall enforce this ~~By-law~~bylaw. Penalty for violation shall be \$50 for each day that the violation continues, constituting a separate offense. In the event of violation, a ~~Police Officer~~police officer may give to the offender a written notice to either appear before the Clerk of the District Court at any time during office hours, no later than 21 days after the date of such notice, or to mail the stipulated penalty to said clerk, as provided under section 21D of Chapter MGL c. 40, General Laws~~§ 21D~~.

## **Chapter 225**

### **Zoning**

**[HISTORY: Adopted by the Town Meeting of the Town of Cheshire 6-8-2015 ATM by Art. 15. Amendments noted where applicable.]**

#### **Article I**

#### **Title, Authority and Purpose**

**§ 225-1.1 Title.**

This ~~B~~bylaw shall be known as the "Zoning Bylaw of the Town of Cheshire, Massachusetts," hereinafter referred to as "this ~~B~~bylaw."

**§ 225-1.2 Authority.**

This ~~B~~bylaw is adopted in accordance with the provisions of Chapter 40A of the General Laws, as amended, to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of the present and future inhabitants of the ~~t~~Town.

**§ 225-1.3 Purpose.**

The purpose of this ~~B~~bylaw is to achieve greater implementation of the powers granted to municipalities under Article 89 of the Amendments to the Constitution of the Commonwealth in the general interest of public health, safety and welfare, including but not limited to the following objectives:

- A. To prevent overcrowding of land; to secure safety from fire, flood, panic and other dangers; to conserve health; to lessen congestion in the streets; to encourage housing for persons of all income levels.
- B. To facilitate the adequate provisions of transportation, water supply, drainage, sewerage, schools, parks, open space and other public requirements.
- C. To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

D. To preserve and increase amenities by the promulgation of regulations designed to:

- (1) Protect the Town's significant environmental features such as: ~~flood plains~~floodplains and flood-prone areas, wetlands, ~~the~~ Hoosic River, reservoir, brooks, ponds, water resources, woodlands, areas of scenic beauty, and sites and structures of historic importance.
- (2) Preserve the natural, scenic and aesthetic qualities of the community.
- (3) Minimize the adverse effects of development on the Town's unique environmental and historic features.
- (4) Employ cooperatively the various measures by the Town's agencies under diverse legislative authority, including the State Sanitary Code, Wetlands Protection Act, ~~Subdivision Control Legislation~~subdivision control legislation, and the State Building Code, for the protection and enhancement of the Town's existing small-town character, open spaces, low density of population, and in the interests of the Town's orderly growth at a deliberate pace.

**Article II**  
**Zoning Districts**

**§ 225-2.1 Types of zoning districts.**

**[Amended 6-11-2018 ATM by Art. 13; 6-10-2019 ATM by Art. 8]**

For the purpose of this ~~B~~ylaw, this Town of Cheshire is divided into the following districts in which the use, construction, alterations and locations of buildings, and the use of land is regulated to protect the public health, safety and welfare in accordance with Article 89 of the Constitution of the Commonwealth and Chapter 40A of the General Laws and amendments thereto:

**Base Districts**

R-1	Residential District
A-R	Agricultural-Residential District
B	Business District
LI	Light Industrial District

**Overlay Districts**

FP	Flood Plain District
FHD	Flood Hazard District
WSPD	Water Supply Protection District
MED	Marijuana Establishment District

**§ 225-2.2 Location of districts.**

**[Amended 6-10-2019 ATM by Art. 8]**

The districts set forth in § 225-2.1 are defined and bounded as shown on a map entitled "Zoning Map of Cheshire, Massachusetts," dated \_\_\_\_\_, ~~2019~~June 8, 2015, and on file in the ~~Θ~~office of the Town Clerk; said map and all explanatory matter thereon are hereby declared to be part of this ~~B~~ylaw.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 225-2.3 District boundary lines.**

The district boundary lines shall be as shown as the Zoning Map and indicated by the dimensions entered thereon.

**§ 225-2.4 Rules of interpretation for district boundary lines.**

For the purposes of interpretation of district boundaries as shown on the Zoning Map, the following rules shall apply:

- A. Boundaries which appear to follow or run approximately parallel to the center line of streets, railroads or streams shall be construed to follow such lines or run parallel to them at a distance indicated on the Zoning Map.
- B. Boundaries indicated, as following shorelines of lakes or ponds shall be construed to follow such shorelines.
- C. Boundaries indicated, as approximately following plotted lot lines shall be construed as following such lot lines.
- D. Boundaries, which appear to run parallel to the features indicated above, shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the Zoning Map.
- E. In cases of uncertainty or disagreement concerning the exact location of a district boundary line or where physical features existing on the ground are at variance with those shown on the Zoning Map or in other circumstances not covered herein, the district boundary shall be determined by the Zoning Board of Appeals.

**Article III**  
**Use Regulations**

**§ 225-3.1 Allowable uses.**

Except as provided by law or in this Bylaw, no building or structure shall be erected and no building, structure or land, or part thereof, shall be used for any purpose or in any manner other than for one or more of the uses set forth in the accompanying Table of Use Regulations, § 225-3.2, as permitted by right in the district in which such building, structure or land is located, or which may be permitted in said district and so authorized by the ~~Special Permit Granting Authority~~ special permit granting authority (SPGA) as provided in § 225-10.1 herein.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 225-3.2 Table of Use Regulations.**

**[Amended 6-11-2018 ATM by Art. 13; 6-10-2019 ATM by Art. 7; 6-10-2019 ATM by Art. 8]**

Special Permit Granting Authority ~~permit granting authority~~ (SPGA) and symbols used in the following table:

YES = Use permitted by -right

SPA = Use that may be authorized by special permit from the Zoning Board of Appeals in accordance with the provisions of § 225-10.1 herein.

SPP = Use which may be authorized by special permit from the Planning Board in accordance with the provisions of § 225-10.1 herein.

NO = Specifically excluded or prohibited use (see also § 225-3.3)).

		<b>Zoning Districts</b>			
<b>(a) Principal Uses</b>		<b>R-1</b>	<b>A-R</b>	<b>B</b>	<b>LI*</b>
<b>Residential Uses</b>					
1.	One-family dwelling.	YES	YES	YES	YES
2.	Two-family dwelling, provided the lot area is at least twice the minimum lot area in the district if not serviced with community sewerage or water supply.	YES	YES	YES	YES
3.	<del>Multi-family</del> Multifamily dwelling.	NO	NO	SPP	SPP
4.	Conversion of a one- or two-family dwelling existing on January 1, 1976, and containing 4,000 square feet or more of livable floor area may be authorized under this B <del>by</del> law by special permit in the district or any combination of such uses, as regulated in § 225-10.1 of this B <del>by</del> law.	SPP	SPP	SPP	SPP
5.	Mobile home (as a permanent dwelling).	NO	SPP	SPP	NO
<b>Institutional, Municipal and Community Uses</b>					
6.	Religious or educational use on land owned or leased by the C <del>ommonwealth</del> or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a non-profit <del>nonprofit</del> educational corporation.	YES	YES	YES	YES
7.	Municipal or governmental use.	SPA	SPA	SPA	NO
8.	Public utilities such as telephone exchange, natural gas or electric power facility, pumping station, railroad or bus station.	SPP	SPP	SPP	YES
9.	<del>Non-profit</del> Nonprofit library or museum.	SPP	YES	YES	NO
10.	Hospital, sanitarium, nursing home, children's day-care center or other similar use established and operated under the State Department of Health regulations.	SPP	SPP	SPP	SPP
11.	Private school, college, nursery school,	SPP	YES	YES	YES

**Town of Cheshire**  
**PRELIMINARY DRAFT**

trade or professional school.

**Recreational Uses**

12.	Golf, tennis, swimming or sportsmen club, ski tow, livery or riding stable or other recreational use of similar character.	SPP	YES	SPP	SPP
13.	Summer camps for children or family-type campgrounds established and operated under the State Sanitary Code, Articles IV and VIII, respectively.	SPP	YES	SPP	SPP
14.	Private club (as defined in this B <del>h</del> ylaw).	SPP	SPP	SPP	SPP
15.	Boat house for rental of boats and canoes.	SPP	YES	YES	SPP

**Business, Industrial and Other Uses**

16.	Hotel, motel, guest house or restaurant where food is served primarily for consumption within the building.	NO	SPP	YES	YES
17.	Antique or gift shop or art gallery.	SPP	YES	YES	YES
18.	Automobile service station, commercial garage or sales garage.	NO	SPP	SPP	SPP
19.	Place of amusement or assembly.	NO	YES	SPP	SPP
20.	Sale or storage of feed, fuel, lumber or building supplies.	NO	YES	YES	YES
21.	Research laboratory or light manufacturing (including solar) activity where the major portion of the product is retailed on the premises or by mail, not including marijuana uses; S <del>u</del> bject to performance standards.	NO	YES	YES	YES
22.	The removal of sand, gravel, rock, loam, topsoil or other earth material as governed by Planning Board regulations.	SPP	SPP	SPP	SPP
23.	Office, bank, retail business or consumer service establishment, unless specifically otherwise regulated in this B <del>h</del> ylaw.	NO	SPP	SPP	SPP
24.	Any lawful industrial, manufacturing, warehousing, service or utility use, including processing, fabrication, assembly or storage unless specifically otherwise regulated in this B <del>h</del> ylaw.	NO	SPP	SPP	YES
25.	Commercial greenhouse, nursery or landscape gardening, not including marijuana uses.	NO	YES	YES	YES
26.	The use of land or structure for the primary purpose of agriculture, horticulture or floriculture.	YES	YES	YES	YES
27.	Kennel or veterinary hospital.	NO	SPP	SPP	SPP
28.	Cemetery.	SPP	SPP	SPP	NO

**Town of Cheshire**  
**PRELIMINARY DRAFT**

29.	Commercial race track, drive-in theaters, trailer parks, billboards or off-premises signs.	NO	NO	NO	NO
30.	Used car lots or other automobile sales establishments where vehicles for sale are stored outdoors or junkyards.	NO	SPP	SPP	NO
31.	Dump or other area for the disposal of rubbish, except for officially designated areas for such purpose by the Town of Cheshire.	NO	SPP	NO	NO
32.	Radioactive <del>W</del> waste (see § 225-8.2).	NO	SPP	NO	NO
33.	Hazardous <del>W</del> waste (see § 225-8.2).	NO	SPP	NO	NO
34.	Wireless Telecommunication- Facilities <del>telecommunication facilities</del> (see § 225-8.3).	SPP	SPP	SPP	SPP
35.	Large <del>Wind Energy Facilities</del> wind energy facilities (see § 225-8.4).	NO	SPP	NO	NO
36.	Solar Photovoltaic- Installations <del>photovoltaic installations</del> (see § 225-8.6).	SPP	SPP	SPP	SPP
37.	Marijuana cultivation facilities (see § 225-8.7)	NO	SPP	NO	
38.	Marijuana establishments for retailers, manufacturers, testing laboratories, research facilities, <del>micro-businesses</del> microbusinesses, craft cooperatives and all other types of licensed marijuana facilities, including Medical- <del>Marijuana Treatment Centers (see</del> medical marijuana treatment centers (see § 225-8.7).	NO	NO	SPP	

\* Uses subject to performance standards.

		Zoning Districts			
(b) Accessory Uses		R-1	A-R	B	LI
1.	Occupation, profession, craft or art engaged in within a dwelling or in an accessory building by a resident of the premises, as a use accessory thereto, and employing not more than two persons outside the household, and provided there is no external evidence of the conduct of such occupation, profession, craft or art except the permitted sign as regulated in Article VII of this Bylaw.	YES	YES	YES	YES



**Town of Cheshire**

**PRELIMINARY DRAFT**

2.	The use of a room or rooms in a dwelling by a resident thereof for a business or profession involving the provision of services or sale of products, articles or goods made on the premises, and employing not more than one person outside of the household, provided there is no external evidence of the conduct of such business or occupation except the permitted sign as regulated in Article VII of this Bylaw.	YES	YES	YES	YES
3.	Use of premises by a resident carpenter, electrician, painter, plumber, or other artisan, for incidental work in connection with his off-premises occupation, provided that no manufacturing or business requiring substantially continuous employment may be carried on.	YES	YES	YES	YES
4.	Storage of materials or equipment as part of a home occupation described in § 225-3.2(b)(1), § 225-3.2(b)(2) or § 225-3.2(b)(3). The storage of materials or equipment shall be within the principal or accessory building or on the rear portion of the lot and properly screened from view from the street and adjoining properties.	SPP	YES	YES	YES
5.	Rental of not more than four rooms, with or without meals, in a dwelling by a resident family, provided no separate kitchen facilities are maintained.	YES	YES	YES	YES
6.	Roadside farm stand selling primarily agricultural, horticultural or floricultural products raised on the premises, provided that no products are displayed for sale within 20 feet of the street.	YES	YES	YES	YES
7.	Greenhouse, tennis court, swimming pool or any such facility not for commercial purposes.	YES	YES	YES	YES

**Town of Cheshire**  
**PRELIMINARY DRAFT**

8.	Stripping of topsoil when incidental to: the erection of a building or structure for which a building permit has been issued; the construction of a private driveway; any accessory use incidental to a permitted use; the construction of a private street in an approved subdivision; or municipal or government construction or operation.	YES	YES	YES	YES
9.	The display of a sign or signs pertaining to a permitted use as regulated in Article VII <del>in</del> of this Bylaw.	YES	YES	YES	YES
10.	The raising or keeping of domestic animals, for use by residents of the premises, not as a commercial venture, subject to the regulations of the Board of Health, provided all grounds used for pasturing or other purposes involving unrestrained animals shall be fenced.	SPA	YES	YES	YES
11.	The raising and keeping of household pets by the residents of the premises not as a commercial venture.	YES	YES	YES	YES
12.	Trailer of type intended only for camping purposes, stored within sight of a public way in excess of 30 days in any calendar year, provided it is not used for living purposes.	SPP	YES	YES	YES
13.	Any accessory use to a by-right use, whether or not on the same parcel, which is necessary in the connection with scientific research and development or related production, provided the Planning Board finds that the proposed accessory use does not substantially derogate from the public good.	SPP	SPP	SPP	SPP
14.	Radioactive <del>W</del> waste (see § 225-8.2).	NO	SPP	NO	SPP
15.	Hazardous <del>W</del> waste (see § 225-8.2).	NO	SPP	NO	NO
16.	Small <del>Wind Energy Systems</del> <u>wind energy systems</u> (see § 225-8.5).	SPP	SPP	SPP	SPP
17.	Accessory farm stores.	NO	YES*	NO	NO
18.	Agricultural tourism, or agritourism.	NO	YES*	NO	NO

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- |                                     |    |      |    |    |
|-------------------------------------|----|------|----|----|
| 19. Value-added agricultural uses.  | NO | YES* | NO | NO |
| * Subject to performance standards. |    |      |    |    |

**§ 225-3.3 Uses prohibited in all districts.**

Notwithstanding any provision of this B~~h~~ylaw to the contrary, the following uses shall be prohibited:

- A. The distillation of bones, rendering of fat or reduction of animal matter.
- B. Commercial piggeries, fur farms and commercial slaughterhouses.
- C. Keeping of livestock or poultry in the R-1 District; provided, however, that the keeping of pets shall be permitted.
- D. Storage ~~of~~or treatment of ash or other similar material causing dust.
- E. Storage of more than two commercial vehicles in the R-1 District.
- F. Storage of one or more junk vehicles for a period of more than six months in such a manner as to cause said vehicle to be observable from any place ~~into~~ which the public has a right to access.
- G. The use of any lot or tract of land for a mobile home park or the expansion of any mobile home park existing on the effective date of this B~~h~~ylaw.
- H. Billboards and other ~~non-accessory~~nonaccessory signs.

**§ 225-3.4 Compliance with other regulations.**

Every use permitted by right or authorized by special permit under the provisions of this B~~h~~ylaw shall be subject to the State Building Code, State Sanitary Code, and the Town's Board of Health regulations and all other applicable statutes, bylaws and regulations, including off-street parking regulations, sign regulations, and ~~flood plain~~floodplain and wetlands regulations set forth in this B~~h~~ylaw.

**§ 225-3.5 Uses subject to Flood Plain District or wetland area.**

Any use permitted and as regulated in the portion of any zoning district overlaid by a Flood Plain District or ~~Wetland Area~~wetland area shall be permitted subject to the restrictions set forth in §§ 225-9.1 and 225-9.2.

**§ 225-3.6 Multiple classifications.**

Where a structure or use might be classified under more than one of the listed uses or structures, the more specific classification shall determine permissibility and applicable regulations.

**§ 225-3.7 Accessory structures and accessory uses.**

Subject to the limitations contained in this B~~h~~ylaw, a related minor use, building or structure, which is customarily incidental and subordinate to any lawful principal use, shall be permitted on the same lot with the building, use or structure to which it is accessory.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 225-3.8 Agricultural buildings, structures and uses.**

Farm buildings and structures used exclusively for agricultural purposes shall be deemed to be accessory buildings and structures for the purpose of this Bylaw. Such buildings and structures may be located on the same lot with the principal permitted use or on separate lots.

**§ 225-3.9 Environmental performance standards.**

Any use of land, buildings or structures which creates excessive and objectionable noise, fumes, odor, dust, electrical interference, or undue traffic shall be prohibited in all districts.

**§ 225-3.10 Performance standards for uses in Light Industrial Zone.**

**[Added 6-10-2019 ATM by Art. 8]**

- A. Emissions of smoke, dust and other particulate matter, and of toxic and noxious gases, are not to meet or exceed Massachusetts and federal standards.
- B. Vibration caused by every use shall be so minimized that the ground vibration does not occur at any point on or beyond the parcel in which the use is located.
- C. Heat, odors, glare and/or steam produced by any activity shall be carried on in such a manner that the heat, odors, glare or steam shall not intrude beyond the boundary lines of the parcel within which the use is located.
- D. Noise and sound levels within the LI Zone are not to exceed levels established by the noise regulations of the Department of Environmental Protection of Massachusetts, 310 CMR 7.10.
- E. Water supply, drainage, rubbish and waste disposal systems shall conform with all applicable codes and standards.
- F. Discharge into the atmosphere or air contaminants shall be subject to all requirements of the Massachusetts Department of Environmental Protection.
- G. Industrial activities shall be of such nature as not to cause damage or nuisance to the health, safety, peace or general welfare of persons residing or working in the vicinity of the LI Zone.

**§ 225-3.11 Performance standards for accessory farm stores.**

**[Added 6-10-2019 ATM by Art. 7]**

Accessory farm stores shall comply with the following:

- A. No accessory farm store shall be located within 25 feet of a street line.
- B. Provision shall be made for off-street parking.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 225-3.12 Performance standards for agricultural tourism, or agritourism.**  
**[Added 6-10-2019 ATM by Art. 7]**

Agricultural tourism, or agritourism, uses shall comply with the following:

- A. Agricultural tourism may only occur on farm property which qualifies as a farm as defined by the Town of Cheshire Right to Farm Bylaw.
- B. The side, front and back setbacks for all events, including but not limited to weddings and concerts, must be no less than 100 feet.
- C. There shall be no electronically amplified sound at events except between the hours of 10:00 a.m. and 10:00 p.m.
- D. Must comply with all applicable permits or licenses, including but not limited to those required by the Board of Health.

**§ 225-3.13 Performance standards for value-added agriculture uses.**  
**[Added 6-10-2019 ATM by Art. 7]**

Value-added agriculture uses shall comply with the following:

- A. Value-added agricultural production is only allowed on parcels of two acres or larger.
- B. No buildings shall be located within 100 feet of a district not allowing that use.
- C. No buildings shall be located within 25 feet of a street line.
- D. All value-added agricultural production must remain compliant with all applicable state and federal regulations.
- E. Must comply with all applicable permits or licenses, including but not limited to those required by the Board of Health.

**Article IV**  
**Intensity Regulations**

**§ 225-4.1 Principal buildings and structures.**

All buildings and structures other than accessory buildings and structures hereafter erected in any district shall conform to the specifications listed in the Table of Dimensional Requirements, § 225-4.2.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 225-4.2 Table of Dimensional Requirements.**  
**[Amended 6-10-2019 ATM by Art. 8]**

Zoning District	Minimum Yard Dimensions						Maximum Height of Buildings	
	Minimum Lot Dimensions		(Setbacks)			Maximum % Lot Coverage		
	Area	Frontage	Front	Side	Rear			
	(square feet)	(feet)	(feet)	(feet)	(feet)	(1)		
							Stories	Feet
R-1	60,000	200	50	20	30	25	3	40
A-R	60,000	200	50	30	40	20	3	40
B	60,000	200	50	20	30	25	3	40
LI	80,000	200	50	30	40	20	3	40

Notes:

- (1) Including accessory buildings.

**§ 225-4.3 Additional dwelling units on lot.**

- A. No more than one dwelling shall be built upon any lot, except that additional dwelling units may be allowed by special permit on a lot that meets the frontage and setback requirements and has a minimum lot size of "n" multiplied by 60,000 square feet, where "n" equals the total number of dwelling units.
- B. Adequate access, as determined by the ~~Special Permit Granting Authority~~ special permit granting authority, must be provided for each dwelling unit.
- C. Any roads constructed must meet the standards specified in the "Rules and Regulations Governing the Subdivision of Land", Cheshire, Massachusetts.

**§ 225-4.4 Setbacks for accessory buildings and structures.**

- A. No accessory building or structure shall be located within the required front yard area for a principal building or structure.
- B. No accessory building or structure shall be located in any side yard nearer to the lot line than 10 feet.
- C. No accessory building or structure shall be located in a rear yard nearer to the rear lot line than 10 feet.
- D. No accessory building or structure shall be located nearer than 10 feet to another principal or accessory building or structure.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 225-4.5 Location of driveways.**

No driveway shall be located any closer than 10 feet to the side lot line.

**§ 225-4.6 Visibility at corners.**

On any corner lot there shall be no building, structure, fence, shrubbery or plantings such as will obstruct clear vision, in the space between three feet and eight feet above the ground within the triangular area formed by the corner and points 20 feet from the corner along street lines.

**§ 225-4.7 Rule of measurement for front yards.**

All measurements for the depth of front yards will be from the right-of-way line where a plan of the way is on file with the Registry of Deeds, or, in the absence of such plan, from a line 25 feet from the parallel with the ~~centerline~~center line of the traveled way.

**Article V**  
**Nonconforming Structures, Uses and Lots**

**§ 225-5.1 Exemptions.**

Except as provided herein, this ~~B~~ylaw shall not apply to:

- A. Structures and uses lawfully in existence prior to the effective date of this ~~B~~ylaw. This shall include existing billboards.
- B. A structure lawfully begun under a building permit or special permit issued before the first publication of notice of the required public hearing by the Planning Board on the applicable zoning bylaw or amendment.
- C. The alteration, reconstruction, extension or structural change to a one-family or two-family dwelling, provided this does not increase the nonconforming nature of such structure.
- D. The expansion or reconstruction of existing structures for the primary purpose of agriculture, horticulture or floriculture.
- E. Nonconforming lots of record and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Law are exempt from the provisions of this ~~B~~ylaw to the extent and as provided in ~~Section 6 of Chapter~~MGL c. 40A of the General Laws, § 6.

**§ 225-5.2 Requirements for extension, reconstruction or change in use.**

The Planning Board may authorize by special permit any extension, alteration or reconstruction of a nonconforming structure to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent, provided that no such extension, alteration, reconstruction or change in use shall be permitted unless the Planning Board finds:

- A. That such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood;

**Town of Cheshire**  
**PRELIMINARY DRAFT**

B. That such extended, altered, reconstructed structure or changed use shall not be in greater nonconformity with open space, yard and off-street parking requirements of this B~~h~~ylaw.

**§ 225-5.3 Reconstruction of nonconforming structure damaged by fire, explosion or catastrophe.**

A nonconforming structure damaged by fire, explosion or any other catastrophe may be rebuilt, provided such rebuilding, reconstruction or restoration shall be undertaken within two years of such catastrophe and the structure as rebuilt or restored shall not be in greater nonconformity with the provisions of this B~~h~~ylaw. Such rebuilt, reconstructed or restored structure may be enlarged or changed in accordance with § 225-5.2 herein.

**§ 225-5.4 Maintenance, repair and reconstruction of unsafe nonconforming structures.**

Nothing in this B~~h~~ylaw shall be deemed to restrict the normal maintenance and repair on nonconforming structures or prevent reconstruction to a safe condition of any structure or part thereof, declared to be unsafe by any official charged with the protection of the public safety, upon the order of such official.

**§ 225-5.5 Abandonment.**

Any nonconforming use which has been abandoned or not used for two years or more shall not be reestablished, except by special permit from the Planning Board, and any such future use of the premises shall conform to the provisions of this B~~h~~ylaw.

**§ 225-5.6 Conditions, safeguards and limitations.**

The Planning Board may impose reasonable conditions, safeguards and limitations on applications for special permits under this ~~section~~ article, designed to lessen any possible adverse impacts on adjacent uses or the neighborhood, whenever a nonconforming use is authorized to enlarge, expand, extend; or convert to another nonconforming use under the provisions of this ~~section~~ article.

**Article VI**  
**Off-Street Parking Requirements**

**§ 225-6.1 Off-street parking required.**

Suitable off-street parking shall be provided on the premises in accordance with the following Parking Schedule for each building or structure which is erected, altered or enlarged after the effective date of this B~~h~~ylaw.

**§ 225-6.2 Parking Schedule.**

<b>Structure/Use</b>	<b>Minimum #<del>Number</del> of Spaces Required</b>
Dwelling	1 off-street parking space for each dwelling unit-
Accessory Home Occupation <del>home occupation</del> or	1 parking space for each <del>non-resident</del> <u>nonresident</u>
Office	employee, plus adequate parking for clients-
Business	Adequate space for employees, customers, service and supply areas-



**Town of Cheshire**  
**PRELIMINARY DRAFT**

**Article VII**  
**Sign Regulations**

**§ 225-7.1 Permitted accessory signs.**

The following accessory signs are permitted in all districts and shall be regulated as follows:

- A. One sign, not exceeding six square feet in area, for a permitted accessory use on the premises.
- B. Signs for commercial or other nonresidential uses exceeding six square feet in total area require a special permit from the Planning Board. No sign shall exceed 25 square feet.

**§ 225-7.2 Sign standards.**

All signs shall comply with the following standards:

- A. No sign shall use moving parts, noise-making devices or blinking, rotating, or flashing or red lights, or lights changing in intensity.
- B. No sign shall be placed on the roof of any building or structure or extend above the parapet or eave line.
- C. No sign or light shall be placed so as to constitute a traffic hazard or nuisance.
- D. A ~~free-standing~~freestanding sign may not exceed 20 feet in height above grade or be closer to the front lot line than 20 feet, except with a special permit from the Planning Board where the Board finds that requirements of the particular location dictate greater height or a smaller setback.
- E. No sign shall be located off the premises to which it applies, except that directional, informational or identification signs may be allowed by special permit by the Planning Board where such signs will serve the public convenience and not be detrimental to the neighborhood with respect to size, location or design.
- F. No sign shall employ artificial lighting, except with a special permit from the Planning Board.

**Article VIII**  
**Special Regulations**

**§ 225-8.1 Temporary buildings.**

- A. A temporary building, including a mobile home or trailer, may be used as a temporary residence or office during and incident to the construction of a permanent building on the premises.
- B. A temporary building, including a mobile home or trailer, may be used as a temporary office or storage facility during construction in adjacent areas for a period of one year.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- C. No temporary building shall be used without first obtaining a permit from the ~~building inspector.~~Building Inspector.
- D. A maximum one-year extension to a permit for a temporary building shall be permitted and in no case shall a temporary building be so occupied for a period exceeding two years from the date of permit.

**§ 225-8.2 Radioactive and hazardous waste disposal.**

- A. No land within the Town of Cheshire may be used for the collection, treatment, storage, burial, incineration, or disposal of radioactive waste, including but not limited to waste classified as low-level radioactive waste, unless the site has been approved by a special permit issued by the Planning Board in accordance with the provisions of § 225-10.1 of this ~~B~~bylaw. Such special permits may be issued subject to conditions and limitations on the proposed use as the Planning Board may determine are necessary for the protection of the public health, safety and welfare.
- B. No land within the Town of Cheshire may be used for the collection, treatment, storage, burial, incineration, or disposal of hazardous waste, unless the site has been approved by a special permit issued by the Planning Board in accordance with the provisions of § 225-10.1 of this ~~B~~bylaw. Such special permits may be issued subject to conditions and limitations on the proposed use as the Planning Board may determine are necessary for the protection of the public health, safety and welfare.

**§ 225-8.3 Wireless telecommunication facilities.**

- A. Purpose. The purpose of this bylaw is to mitigate the impacts of towers and wireless telecommunication facilities in order to preserve the character and appearance of the Town; to protect the scenic, historic, environmental, natural, and man-made resources of the Town; and to protect property values, while providing for the responsible use of wireless technologies.
- B. Consistency with ~~Federal Law~~federal law. This bylaw is intended to be consistent with the Telecommunications Act of 1996. In accordance with the Act, these bylaws are not intended to:
  - (1) Prohibit or have the effect of prohibiting the provision of personal wireless service;
  - (2) Unreasonably discriminate among providers of functionally equivalent services; and
  - (3) Regulate personal wireless services on the basis of the environmental effects of ~~radio-frequency~~radiofrequency emission to the extent that such facilities and emissions comply with the Federal Communication Commission's (FCC) regulations concerning such emission.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

C. Definitions. As used in this section, the following terms shall have the meanings indicated:

**ELIGIBLE FACILITIES REQUEST**

As defined in § 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (HR 3630).

**SUBSTANTIAL CHANGES**

The following are considered substantial changes to the physical dimensions of a tower or base station, but shall not be deemed an exclusive list:

- (1) The mounting of a proposed antenna on a tower that would increase the existing height of the tower by more than 10%.
- (2) Any change, addition, modification or alteration to the tower or wireless telecommunication facility that would require the installation of Federal Aviation Administration (FAA) mandated obstruction lights.
- (3) The mounting of a proposed antenna that would involve adding an appurtenance to the tower that would protrude from the edge of the tower more than 10 feet.
- (4) Any change, addition, modification or alteration to the tower or wireless telecommunication facility that would violate the property line setback requirement set forth in § 225-4.2<sup>u</sup>, Table of Dimensional Requirements<sup>u</sup>.

**WIRELESS TELECOMMUNICATION FACILITY**

Any equipment that broadcasts or receives ~~radio frequency~~radiofrequency waves in order to provide wireless telecommunication services, including but not limited to antennas and repeaters.

**WIRELESS TELECOMMUNICATION SERVICE**

Any commercial mobile service, wireless service, common carrier wireless exchange service, cellular service, personal communication service, specialized mobile radio service, paging service, wireless data service, fixed wireless broadband internet service, or public or private radio dispatch.

**WIRELESS TELECOMMUNICATION SERVICE PROVIDER**

Any person or entity providing wireless telecommunication services.

- D. Exemptions. The following wireless telecommunication facilities are exempt from this bylaw: municipal radio dispatch service; emergency radio dispatch service; amateur radio; citizens band radio; AM/FM radio; or broadcast television. Otherwise ~~non-exempt~~nonexempt wireless telecommunication facilities shall not be considered an exempt use merely because ~~it is~~they are installed on an exempt tower or structure.

**Town of Cheshire**

**PRELIMINARY DRAFT**

E. ~~Eligible Facilities Request~~facilities request under § 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (HR 3630).

- (1) Eligible facilities requests for a modification of an existing wireless tower or base station that does not substantially change the physical dimension of such tower or base station requires site plan approval by the Planning Board prior to the issuance of a building permit by the Building Inspector.
- (2) The Planning Board shall review and act upon applications for site plan approval within 90 days of the submittal of a complete application.
- (3) As part of the site plan approval process, the applicant shall provide all the information required by this bylaw.
- (4) The Planning Board shall approve an application for site plan approval for an eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimension of such tower or base station. However, the Planning Board may impose conditions on its approval of the site plan.
- (5) Eligible facilities requests for a modification of an existing wireless tower or base station that substantially changes the physical dimension of such tower or base station requires a special permit from the SPGA.

F. Special permit required. No tower or wireless telecommunication facility shall be installed, constructed or substantially changed until a special permit has been issued by the ~~Special Permit Granting Authority~~special permit granting authority (SPGA) in accordance with § 225-10.1 "Special Ppermits", and the requirements set forth therein. The SPGA shall adhere to the review and decision time limits set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 9, except where superseded by FCC Declaratory Ruling and Order, FCC 09-99.

G. General requirements.

- (1) Towers shall not be built on speculation. If the applicant is not a wireless telecommunications service provider then the applicant shall submit a contract or letter of intent showing that a wireless telecommunication service provider intends to install a wireless telecommunication facility on land owned or leased by the applicant.
- (2) Wireless telecommunication facilities shall be installed on existing towers or structures whenever feasible.

## **Town of Cheshire**

### **PRELIMINARY DRAFT**

- (3) All towers shall be constructed and wireless telecommunication facilities installed so that the tower is able to accommodate additional wireless telecommunication facilities operated by additional carriers.
- (4) The wireless telecommunication facility shall comply with all FCC and Massachusetts Department of Public Health (MDPH) standards and requirements regarding ~~radio frequency~~radiofrequency radiation.
- (5) The tower, wireless telecommunication facilities, access road, stormwater controls, vegetative screening and accessory storage building(s) shall be maintained in good condition.
- (6) The applicant and subsequent operator(s) shall submit and maintain at all times adequate liability insurance, as determined by the SPGA, against loss or damage to persons or property, including personal injury or death resulting from the wireless telecommunication facility or tower. The operator shall submit proof of a valid certificate of liability insurance on a yearly basis to the Building Inspector.
- (7) The applicant shall submit a removal plan prepared by a professional engineer licensed to practice in Massachusetts that includes a cost estimate and detailed plan for the removal of the tower and the wireless telecommunication facilities and for the restoration of the site to its pre-existing condition. The cost estimate must account for inflation.
- (8) The applicant and subsequent operator(s) shall submit and maintain at all times a form of surety in a form and amount approved by the SPGA to cover the cost of remediation of the site if damage occurs during construction and for the removal of the tower and wireless telecommunication facility should they become abandoned.
- (9) The applicant shall submit a letter of determination from the Massachusetts Natural Heritage and Endangered Species Program verifying that no rare or endangered species or species of special concern are present at the proposed site.

#### **H. Design standards.**

- (1) The wireless telecommunication facility and tower shall not exceed 20 feet above the average elevation of the tree line measured within a fifty-foot radius from the base of the proposed tower, unless the applicant proves that additional height is necessary to provide adequate coverage or capacity.
- (2) The minimum distance from the base of the tower to any property line shall be 150% of the total height of the tower or wireless telecommunication facility, whichever is taller.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (3) Any access road to be constructed shall be constructed in a manner that minimizes cut and fill, minimizes erosion, minimizes construction on unstable soils and steep slopes, and minimizes impacts on wetlands. The access road shall be constructed to allow access to the site by emergency vehicles.
- (4) Stormwater controls shall be installed at the site and on the access road in accordance with the Massachusetts Department of Environmental Protection's Stormwater Policy.
- (5) Whenever feasible, all utilities shall be located underground to minimize visual impacts.
- (6) The accessory storage building shall be no larger than 500 square feet and shall not exceed 12 feet in height. The accessory storage building and all other appurtenant structures and equipment shall meet the setback requirements for primary structures set forth in § 225-4.2 despite its designation as an accessory building.
- (7) A sign listing the emergency contact information of the wireless telecommunication facility operator shall be posted at all times in an easily accessible and noticeable location. The SPGA may require additional warning signs. No other signs or advertisements are allowed.
- (8) The SPGA shall determine the type of tower to be constructed in order to mitigate its visual impact on the community.
- (9) The SPGA may require that the tower and wireless telecommunication facility be camouflaged to mitigate its visual impact on the community.
- (10) No night lighting of the tower or wireless telecommunication facility is allowed, unless required by the Federal Aviation Administration, except for manually operated emergency lights for use only when operating personnel are on the site.
- (11) The tower and wireless telecommunication facility shall be constructed to prevent unauthorized persons from accessing the tower and wireless telecommunication facility.
- (12) Vegetative screening shall be used to screen the tower base, accessory storage building(s) and other ground-level structures and equipment from abutting properties and roadways.
  - I. Prohibited areas. No tower or wireless telecommunication facility shall be located within any of the following prohibited areas:
    - (1) A federal, state or locally regulated wetland or vernal pool;
    - (2) One -hundred feet from a wetland or 200 feet from a river or perennial stream; and

**Town of Cheshire**  
**PRELIMINARY DRAFT**

(3) A designated critical wildlife habitat area for endangered, threatened or species of special concern.

J. Visual impact analysis. The applicant shall conduct a balloon test within 30 days of submission of a complete special permit application. The applicant shall advertise the date, time and location of the balloon test in a newspaper with a general circulation in the Town at least seven days prior to the test. The applicant shall also send notice of the balloon test via certified mail to all abutters entitled to notice of the special permit hearing.

(1) The applicant shall fly a four-foot-diameter brightly colored balloon at the location and maximum elevation of the tower.

(2) The balloon shall be flown for at least eight consecutive daylight hours on two days.

(3) If visibility and weather conditions are inadequate for observers to clearly see the balloon, further tests may be required by the SPGA.

K. Continuing obligations for tower and wireless telecommunication facility owners.

(1) Every two years, the owner of a wireless telecommunication facility shall pay for an independent consultant, hired by the Town, to determine whether the wireless telecommunication facility is in compliance with all FCC and MDPH standards and requirements for ~~radio-~~  
~~frequency~~radiofrequency radiation during peak operation. The independent consultant shall prepare and submit a report of the inspection results to the Building Inspector within 30 days of the inspection.

(2) Every five years, the owner of a tower constructed to support wireless telecommunication facilities shall pay for an independent professional engineer licensed to practice in Massachusetts, hired by the Town, to assess the structural integrity of the tower. The independent professional engineer shall prepare and submit a report of the inspection results to the Building Inspector within 30 days of the inspection.

L. Application requirements. Applicants shall submit the following required information as part of ~~its~~their site plan approval application for an eligible facilities request or for ~~its~~their special permit application for a wireless telecommunication facility or tower:-

(1) Contact information for the applicant, including name, address and telephone number. If the applicant is not the property owner, provide the written consent of the property owner on which the proposed tower and/or wireless telecommunication facility will be located.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (2) The most recent USGS Topographical Map (7.5-minute map) showing the proposed wireless telecommunication facility site and the surrounding area within at least two miles of the proposed site.
- (3) A vicinity map showing the entire area within a 1,000-foot radius of the proposed tower and/or wireless telecommunication facility, including topography, public and private roads, driveways, buildings and structures, utilities, wetlands, critical wildlife habitat areas, historic sites, location of the tower and the property lines of the proposed site.
- (4) Site plans at a scale of one inch equals 40 feet or similar scale, prepared, sealed and signed by a professional engineer licensed to practice in Massachusetts, which show the following information:
  - (a) Contour intervals no greater than two feet.
  - (b) Existing property lines, utilities, structures, ~~stonewalls~~ stone walls, fences and wooded areas.
  - (c) Wetlands, floodplains and certified vernal pools within 200 feet from the proposed wireless telecommunication facility, tower and access road.
  - (d) Location of critical wildlife habitat areas, if any.
  - (e) All proposed changes to the existing site, including but not limited to areas of temporary or permanent clearing, areas of grading and areas of cut and fill.
  - (f) Detailed plans for the drainage of surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
  - (g) Location of the proposed tower, appurtenant equipment and accessory buildings.
  - (h) Location of proposed screening, landscaping, fencing, signage and exterior lighting.
  - (i) Proposed spot elevation at the base of the proposed tower.
  - (j) Proposed utilities, including the distance from the source of power and whether underground or above ground.
  - (k) Plans for the proposed access road, including but not limited to grading, drainage, width, depth of gravel and surface material.
  - (l) Plans for the accessory storage building, including a floor plan and representative elevation views, indicating the roof, facades, doors and other exterior materials.



**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (5) A project narrative, including plans and elevations, prepared by a professional engineer licensed to practice in Massachusetts, that:
- (a) Describes any tower's design, elevation and compliance with the ~~state building code~~ State Building Code.
  - (b) Describes a tower's capacity, including the number, elevation and types of antennas that the tower is proposed to accommodate.
  - (c) Documents the elevation above grade for all proposed mounting positions for antennas to be installed on a tower and the minimum distances between the antennas.
  - (d) Details the tower foundation and anchoring system.
  - (e) Details the proposed exterior finish and camouflaging of the tower and wireless telecommunication facility.
  - (f) Demonstrates that existing towers, structures, wireless telecommunication facilities and repeaters within five miles of the proposed site cannot reasonably be modified to provide adequate coverage and capacity to the community.
  - (g) Describes potential changes or additions to existing towers or structures that would enable them to provide adequate coverage.
  - (h) Describes the output frequency, number of channels, and the power output per channel for each antenna; ~~include~~ a coverage map.
  - (i) Demonstrates the proposed wireless telecommunication facility's compliance with the standards set forth in this bylaw.
  - (j) Proves that the proposed wireless telecommunication facility and the cumulative effect of all the wireless telecommunication facilities at the site will be in compliance with all FCC and Massachusetts Department of Public Health (MDPH) regulations, standards and requirements and includes a statement that the applicant commits to continue to maintain compliance with all FCC and MDPH regulations, standards and requirements for ~~radio frequency~~ radiofrequency radiation (RFR).
- (6) A letter of intent committing the applicant and its successors to permit shared use of any tower if the additional users agree to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC and MDPH regulations, standards and requirements and the provisions of this bylaw.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (7) To the extent required by the National Environmental Policy Act as administered by the FCC, a complete ~~Environmental Assessment~~ environmental assessment (EA) draft or final report describing the probable impacts of the proposed wireless telecommunication facility, or a written statement by the applicant that an EA is not required.
- (8) Other information as requested by the SPGA or Planning Board.
- M. Waiver of application requirements. Upon the written request of the applicant, the SPGA may waive any of the application requirements set forth in Subsection L above that the SPGA deems appropriate for the circumstances and type of wireless telecommunication facility or tower that is being proposed.
- N. Approval criteria. A special permit to construct, install or substantially change a wireless telecommunication facility or tower shall not be issued unless the SPGA finds that the following criteria will be met:
  - (1) The proposed wireless telecommunication facility and/or tower will not have an undue adverse impact on historic resources, scenic views, residential property values and natural and man-made resources.
  - (2) The proposed wireless telecommunication facility and/or tower will comply with all requirements set forth in this ~~B~~ bylaw.
  - (3) The proposed wireless telecommunication facility and/or tower will comply with all federal, state and local laws, regulations and standards.
  - (4) The applicant has proven that it cannot provide adequate coverage or capacity by installing its equipment on an existing tower or structure or by using repeaters in conjunction with existing facilities.
  - (5) The proposed tower provides reasonable opportunity for collocation of other equipment
  - (6) The applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the tower and/or wireless telecommunication facility.
  - (7) The proposed wireless telecommunication facility will not generate undue noise.
  - (8) The proposed wireless telecommunication facility will comply with FCC 96-326 and 105 CMR 120 and any other applicable FCC or MDPH regulations, regarding emissions of electromagnetic radiation and that the required monitoring program is in place and will be paid for by the applicant.

## Town of Cheshire

### PRELIMINARY DRAFT

- O. Independent consultants. Upon submission of an application for site plan approval of an eligible facilities request or for a wireless telecommunication facility or tower special permit, the SPGA will be authorized to hire independent consultants at the applicant's expense, to assist the SPGA with the review of the application materials and to monitor the project to ensure that all work is conducted in accordance with the approved plans and conditions. ~~The~~In the case of a tower permit, the independent consultant may be hired pursuant to ~~M.G.L. Chapter~~MGL c. 44, § 53G.
- P. Removal requirements. An abandoned or unused wireless telecommunication facility or tower shall be removed and the site restored to its pre-existing condition within 180 days of abandonment. If the wireless telecommunication facility or tower is not removed within 180 days of abandonment, the Building Inspector, to the extent it is otherwise duly authorized by law, may cause the wireless telecommunication facility and/or tower to be removed. The cost of removal shall be assessed against the owners of the wireless telecommunication facilities and tower.
- Q. Lapse. Any special permit for a wireless telecommunication facility or tower shall lapse if the wireless telecommunication facility or tower is not installed and operating within one year from the date of approval or the wireless telecommunication facility or tower is abandoned.

#### § 225-8.4 Large wind energy facilities.

- A. Purpose. The purpose of this bylaw is to encourage the responsible development of the ~~the~~Town's wind energy resources by providing standards for the design, placement, construction, monitoring, modification and removal of large wind energy facilities that address public health and safety, minimize impacts on scenic, natural and historic resources of the ~~the~~Town and provide adequate financial assurances for decommissioning.
- B. Applicability. This bylaw applies to all large wind energy facilities to be constructed after the effective date of this bylaw. This bylaw also applies to physical modifications to any existing large wind energy facility that materially alter its type, number, location, height or configuration.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

#### HEIGHT

The distance between the natural grade of the land measured vertically to the tip of the wind turbine blade at its highest point.

#### LARGE WIND ENERGY FACILITY

A wind energy facility with a rated nameplate capacity greater than 10 kW and a height greater than 140 feet and/or the electricity generated is not primarily used on-site.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**SMALL WIND ENERGY SYSTEM (SWES)**

A wind energy facility with a rated nameplate capacity of ~~10 kW~~ 10 kW or less and a height of 140 feet or less and the electricity generated is primarily used on-site. SWES are regulated by § 225-8.5.

**WIND ENERGY FACILITY**

All equipment, machinery and structures utilized in connection with the conversion of wind energy to electricity. This includes, but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, towers, wind turbines, foundations, stormwater control measures, service roads and other appurtenant structures, facilities and equipment.

**WIND TURBINE**

A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a nacelle body and a rotor with two or more blades.

- D. Use regulations. No large wind energy facility shall be erected, constructed, or installed without first obtaining a special permit from the Planning Board in accordance with § 225-10.1. Physical modifications to an existing large wind energy facility that materially alter its type, number, location, height or configuration shall also require a special permit from the Planning Board.
- E. General requirements.
- (1) Compliance. The construction, operation, modification and removal of all large wind energy facilities shall comply with all local, state and federal laws.
  - (2) Site control. The applicant shall demonstrate actual control over and legal access to the proposed site sufficient to allow for the construction and operation of a large wind energy facility.
  - (3) Utility provider conditional approval. The applicant shall demonstrate that it has received conditional approval to connect the large wind energy facility to the electric grid from the utility provider. Off-grid facilities are exempt from this requirement.
  - (4) Operation and maintenance. The operator of a large wind energy facility shall maintain the large wind energy facility, access road(s) and stormwater control measures in good condition. The applicant shall submit an operation and maintenance plan for the life of the expected large wind energy facility, showing how the operator will maintain the large wind energy facility, access road(s) and stormwater control measures in good condition.
  - (5) Contingency plan. The applicant shall submit a contingency plan that outlines the protocols to be followed to mitigate unacceptable adverse impacts to the Town, its residents and the environment. At a minimum, the plan shall include mitigation steps to address the possibility of excessive noise,

**Town of Cheshire**  
**PRELIMINARY DRAFT**

excessive shadow and flicker and excessive wildlife injuries or mortalities as determined by the state or federal agency with jurisdiction over the impacted species.

- (6) Liability insurance. The operator of the large wind energy facility shall obtain and keep current an insurance policy; against loss or damage to persons or property, including personal injury or death resulting from the large wind energy facility. The Planning Board shall determine the minimum amount of liability insurance required. The operator of the large wind energy facility shall provide the Planning Board with proof of liability insurance, in the amount determined by the Planning Board, prior to the issuance of a building permit. All subsequent owners/operators shall continue to provide proof of liability insurance, in the form and amount approved by the Planning Board, to the Building Inspector on an annual basis.
- (7) Removal plan and cost estimate. The applicant shall submit a detailed plan for the removal of the large wind energy facility and restoration of the site to its pre-existing condition upon abandonment or decommissioning. The removal plan shall be prepared by a qualified professional and include a detailed estimate of the anticipated removal and site restoration costs that includes a mechanism to account for inflation.
- (8) Financial surety. The amount and form of surety shall be determined by the Planning Board. The operator of the large wind energy facility shall provide the Planning Board with the following prior to the issuance of a building permit:
  - (a) Surety to ensure that the proposed large wind energy facility project site is properly stabilized to protect downslope properties and public ways.
  - (b) Surety to cover possible damage to public ways and public lands damaged during the transportation of the large wind energy facility components.
  - (c) Surety to cover the cost of removal of the large wind energy facility and the restoration of the site in the event the Town must remove the large wind energy facility and restore the site. The amount and form of surety shall be determined by the Planning Board, but in no event shall the amount exceed 125% of the total estimated cost of removal.
  - (d) No less than 90 days prior to the expiration of any financial surety required by this bylaw, the current operator of the large wind energy facility shall provide the Building Inspector with renewed, extended or replacement financial surety in an amount and form determined by the Planning Board in accordance with this bylaw.
- (9) NHESP letter. The applicant shall petition the Massachusetts Natural Heritage and Endangered Species Program ("NHESP") for a letter of determination as to the possible existence of rare or endangered species and species of special concern at the proposed site.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**F. Design standards.**

- (1) **Height.** No large wind energy facility shall exceed 450 feet in height.
- (2) **Appearance.** All large wind energy facilities shall be finished a neutral (white or gray) ~~non-reflective~~nonreflective color in order to be less visually obtrusive.
- (3) **Signage.** Signs listing the twenty-four-hour contact information of the large wind energy facility operator shall be installed in easily accessible and noticeable locations at the large wind energy facility site. All signs shall comply with the Town of Cheshire's ~~sign bylaw~~Sign Bylaw.
- (4) **Lighting.** Large wind energy facilities shall contain a beacon light only if required by the Federal Aviation Administration (FAA). A large wind energy facility may include lights necessary for the safe operation of the large wind energy facility. All operational lighting shall be directed downwards and screened from roadways and abutting properties with native vegetation. Evidence of the FAA requirement for the facility shall be submitted with the application.
- (5) **Shadow and flicker.** All large wind energy facilities shall be located in areas that do not result in more than 30 hours of shadow/flicker per year on off-site inhabited buildings. The applicant has the burden of proving that any shadowing or flickering on off-site inhabited buildings is less than 30 hours per year. The Planning Board may waive the shadow/flicker limit as to a particular parcel of real property, when written permission is granted by all individuals or entities with control over the affected real property and such permission is recorded with the North Berkshire Registry of Deeds on the title of the affected property.
- (6) **Appurtenant structures and equipment.** All appurtenant structures and equipment (except the tower) shall comply with the dimensional requirements of the underlying zoning district, including but not limited to setbacks and height.
- (7) **Noise regulations.** Operational noise of the large wind energy facility, as measured by the latest standards of the American National Standards Institute, shall not exceed 45 dB(A) or ~~5dB~~five dB(A) above ambient sound, whichever is less, for more than 15 minutes in any one day measured at the nearest property line. Temporary construction work and maintenance work shall be governed by the generally applicable noise bylaw in the ~~town~~Town. The Planning Board may waive the noise limit as to a particular parcel of real property, when written permission is granted by all individuals or entities with control over the affected real property and such permission is recorded with the North Berkshire Registry of Deeds on the title of the affected property.
- (8) **Setbacks.** No large wind energy facility shall be located within 1/4 mile of the nearest property boundary and 1/2 mile of the nearest off-site inhabited building in existence on the date the application to construct a large wind energy facility is received by the Town Clerk. The Planning

**Town of Cheshire**  
**PRELIMINARY DRAFT**

Board may waive the setback requirement as to a particular parcel of real property, when written permission is granted by all individuals or entities with control over the affected real property and such permission is recorded with the North Berkshire Registry of Deeds on the title of the affected property.

- (9) Unauthorized access. All large wind energy facilities shall be constructed to prevent unauthorized persons from gaining access to the large wind energy facility.
- (10) Emergency response access. The large wind energy facility and access roads shall be constructed and maintained to allow for safe access by local emergency vehicles. Local public safety officials shall be provided with the ability to access the facility as needed to respond to emergencies.
- (11) Habitat fragmentation. To the extent possible, large wind energy facilities, associated roadways and transmission lines shall be located in or adjacent to areas where land is already cleared to avoid habitat fragmentation.
- (12) Vegetation clearing. The clearing of natural vegetation shall be limited to that which is necessary for the construction, operation, and maintenance of the large wind energy facility, associated roadways and transmission lines and is otherwise prescribed by applicable laws. Revegetation plans shall be provided for restoration areas required for construction but not necessary for ongoing maintenance and operations. Only native species typically found in the facility's environment may be used for restoration.
- (13) Wetlands. All large wind energy facilities, associated roadways and transmission lines shall be constructed in compliance with all applicable local, state and federal laws pertaining to wetlands.
- (14) Wildlife. All large wind energy facilities, associated roadways and transmission lines shall be constructed to avoid or minimize impacts to wildlife, with particular attention paid to avian and bat species, as well as rare species, endangered species and species of special concern.
- (15) Stormwater management. All stormwater controls installed at the large wind energy facility site and on associated roadways shall be constructed and managed according to the Massachusetts Department of Environmental Protection's Stormwater Policy.
- (16) Invasive species management. The applicant and subsequent large wind energy facility operator shall utilize best management practices during construction and post-construction to control invasive species at the large wind energy facility site and along the associated roadways and transmission lines.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**G. Large wind energy facility site studies.**

- (1) **Balloon/~~e~~Crane test.** Within 21 days after the filing of an application to construct a large wind energy facility, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed large wind energy facility. The balloon or crane shall remain raised in place for a period of eight consecutive daylight hours between sunrise and sunset. The date, time and location of such test shall be advertised in a newspaper of general circulation in the ~~town~~ Town and at the ~~town hall~~ Town Hall at least seven days prior to the date of the test. If visibility and weather conditions are inadequate for observers, the Planning Board may require additional tests.
- (2) **Sight-line simulations.** The Planning Board shall select up to five locations from which the applicant shall conduct and submit sight-line simulations from the chosen location to the proposed large wind energy facility site. All simulations shall be in color and provide an accurate representation of the height, width and breadth of the proposed large wind energy facilities.
- (3) **Project viewshed map.** The applicant shall submit a viewshed map showing all areas within five miles of the proposed large wind energy facility site that will be able to view the large wind energy facility. The viewshed map shall identify streets, historical resources, cultural facilities, recreational resources, publicly owned land, and other local landmarks.
- (4) **Noise analysis.** The applicant shall submit the results of a noise analysis to the Planning Board. The noise analysis shall be conducted in accordance with American National Standards Institute standards and be certified by a qualified independent acoustical engineer. The noise analysis shall contain sufficient information for the Planning Board to determine whether the operation of the proposed large wind energy facility will comply with Subsection F(7), Noise regulations, of this ~~Bylaw~~ and the Massachusetts Department of Environmental Protection's Noise Pollution Policy. In completing the noise analysis, the acoustical engineer shall consider the unique topography of the surrounding area, location of dwellings, prevailing wind direction and atmospheric conditions, such as high wind shear or thermal inversion, that may affect the propagation of sound emitted from the large wind energy facility. The noise analysis shall also include an analysis and discussion of the anticipated impacts of low-frequency noise emitted from the large wind energy facility.
- (5) **Shadow and flicker analysis.** The applicant shall conduct a shadow and flicker analysis and submit its findings to the Planning Board. The shadow and flicker analysis shall, at a minimum, include a list of all off-site inhabited buildings estimated to receive 30 or more shadow/flicker hours per year.
- (6) **Avian and bat species analysis.** The applicant shall submit the results of an avian and bat species analysis to the Planning Board. The avian and bat species analysis shall be conducted and certified by a qualified independent wildlife biologist. The avian and bat species analysis shall contain sufficient information to fully characterize and determine the risk posed by the proposed large wind



## **Town of Cheshire**

### **PRELIMINARY DRAFT**

energy facility to avian and bat species. Applicants are strongly encouraged to comply with the most recent United States Fish and Wildlife Service Land-Based Wind Energy Guidelines when planning and conducting studies to meet the requirements of this subsection. The Planning Board may require the large wind energy facility operator to conduct one year of post-construction monitoring to document avian and bat species injuries and mortalities.

- H. Pre-application conference. Prior to the submission of an application for the construction or modification of a large wind energy facility, applicants are strongly encouraged to meet with the Planning Board at a public meeting to discuss the proposed large wind energy facility project and to clarify the filing requirements and permitting process.
- I. Reasonable conditions and mitigation. The Planning Board may impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the large wind energy facility should they occur.
- J. Application requirements. The applicant shall submit the following required information as part of the application for a large wind energy facility special permit. All site plans shall be signed and sealed by a registered professional engineer and a licensed surveyor.
  - (1) Contact information. Name, address, phone number, e-mail and signature of the applicant, as well as all co-applicants or property owners, if any, and the name, contact information and the signature of any agents representing the applicant.
  - (2) Site identification. Identify the location of the proposed large wind energy facility. Provide the street address, if any, and the tax map and parcel number(s). Provide a list of abutters to the subject property.
  - (3) Location map. A relevant portion of the most recent USGS Quadrangle Map at a scale of one inch equals 25,000 feet or similar scale showing the proposed large wind energy facility site, associated roadways, transmission lines and the area within at least a two-mile radius of the proposed site.
  - (4) Vicinity map. A map of the proposed large wind energy facility site at a scale of one inch equals 300 feet or similar scale, with existing contour intervals no greater than 10 feet showing the entire area within a 3,000-foot radius of the proposed large wind energy facility and shall include: existing topography, exact location of each wind turbine, public and private roads, recreation trails, property lines of all abutters within 1,000 feet, structures, including their use, historic sites, cultural sites, wetlands, known bat hibernacula, known critical habitat areas, other environmentally sensitive areas, location of existing and proposed electric distribution lines, transformers, substations; and access easements.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- | (5) Site plan. A site plan with a scale of one inch equals 40 feet, or other appropriate scale, with contour intervals no greater than two feet showing the following:
  - (a) Property lines of the proposed large wind energy facility site and adjacent parcels within 1/2 mile of the large wind energy facility.
  - (b) Outline of all existing structures, including their uses, located within 1/2 mile of the large wind energy facility.
  - | (c) Existing and proposed public and private roads, driveways, and recreational trails within 1/2 mile of the large wind energy facility.
  - | (d) Representations, dimensioned and to scale, of the proposed large wind energy facility, including, but not limited to, tower foundations, guy anchors, cable locations, associated equipment and structures, fencing, electric distribution infrastructure, parking and access roads.
  - (e) All proposed changes to the existing site, associated roadways and transmission lines, including but not limited to areas of temporary clearing, areas of permanent clearing, areas of grading, and areas of cut and fill.
  - (f) Delineation of all wetland resource areas and buffers on the proposed large wind energy facility site, associated roadways and transmission lines.
  - (g) Location of known habitat areas for rare species, endangered species and species of special concern.
  - | (h) A cross section of the proposed access road indicating its width, crown, depth of gravel, drainage, and paving or other surface material.
- (6) Elevations. Site elevations or views at grade from north, south, west and east, for a distance equal to 1.5 times the height of the large wind energy facility around the proposed large wind energy facility. Elevations shall be at ~~one quarter~~ 1/4 inch equals one foot or similar scale and show the following:
  - (a) The proposed large wind energy facility, associated equipment, existing and proposed structures, and security barriers with total elevation dimensions.
  - | (b) Existing and proposed trees and shrubs at the time of application, with approximate elevations dimensioned.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (7) Technical information. Documentation of the large wind energy facility's nameplate capacity, manufacturer, model number, tower height, rotor diameter, braking mechanisms, other safety mechanisms, tower type, color, foundation type and foundation dimensions.
- (8) Stormwater control plans. Engineering plans showing the drainage of surface water and detailed plans to control erosion and sedimentation, during construction and as a permanent measure, which show conformance to the Massachusetts Department of Environmental Protection's Stormwater Policy.
- (9) Transportation plan. A written transportation plan discussing the anticipated transportation issues created by the transportation of the large wind energy facility components, which shall include the following:
  - (a) A map showing the anticipated transportation route commencing at the Massachusetts state line.
  - (b) All locations in the Town of Cheshire where land alterations and clearing of vegetation will be required, regardless of ownership, including the approximate square footage of each land alteration.
  - (c) A detailed list of all bridges and culverts to be crossed in the Town of Cheshire during the transportation of the large wind energy facility components that includes the applicable width and weight restrictions of each bridge and culvert.
  - (d) Detailed site plans for all anticipated road, bridge, or culvert alterations in the Town of Cheshire along the anticipated transportation route, regardless of ownership.
  - (e) A list of the anticipated combined weight of the delivery vehicles and cargo.
  - (f) A list of the turning radii of the delivery vehicles with cargo.
  - (g) All anticipated road closures and traffic disruptions that may affect emergency response vehicles and plans to manage these road closures and traffic disruptions in cooperation with local emergency officials.
  - (h) Any overhead utility lines.
- (10) Other information.
  - (a) Documents establishing legal access to and control of the proposed large wind energy facility site as required by Subsection E(2).
  - (b) Documents demonstrating that the utility provider has given conditional approval to the applicant to connect to the electric grid as required by Subsection E(3).

**Town of Cheshire**  
**PRELIMINARY DRAFT**

(c) Operation and maintenance plan as required by Subsection E(4).

(d) Plans and costs estimates for the removal of the large wind energy facility as required by Subsection E(7).

(e) Studies and materials required by Subsection G.

(f) Contingency plan as required by Subsection E(5).

(g) Certification of height approval from the FAA, including required lighting.

(h) NHESP letter as required by Subsection E(9).

(i) Revegetation plan as required by Subsection F(12).

K. Waiver. Upon written request of the applicant, the Planning Board may waive any of the application requirements contained in Subsection J; as the Planning Board, in its discretion, deems appropriate.

L. Damage to public ways and public lands. The applicant shall be responsible for the cost of repairing any damage to public ways and public lands in the Town of Cheshire caused by the use of the public ways or public lands in connection with the transportation, construction, operation, maintenance and decommissioning of the large wind energy facility.

(1) In furtherance of this subsection, a qualified independent engineer, paid for by the applicant and selected by the Town, shall document the condition of all public ways and public lands along the anticipated transportation route prior to the transportation of any large wind energy facility component.

(2) Within 30 days after all large wind energy facility components have been transported, the qualified independent engineer, paid for by the applicant and selected by the Town, shall re-document the condition of all public ways and public lands along the actual transportation route to determine whether the public ways and public lands have been damaged by the applicant and, if so, the total cost to repair such damage.

M. Abandonment and removal of large wind energy facilities.

(1) A large wind energy facility shall be deemed abandoned when the large wind energy facility has not been in operation for a period of 12 months.

(2) After 12 months of ~~non-operation~~nonoperation, the Building Inspector shall provide written notification to the owner/operator that such large wind energy facility is presumed to be abandoned.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

The owner/operator has 30 days to rebut the presumption of abandonment by submitting evidence to the Building Inspector that the large wind energy facility has been in operation during the relevant twelve-month period.

- (3) If the owner/operator does not respond within the thirty-day appeal period or does not submit evidence that, in the discretion of the Building Inspector, proves that the large wind energy facility has been in operation for the relevant twelve-month period, then the large wind energy facility shall be deemed abandoned. The Building Inspector shall provide written notification of abandonment to the owner/operator.
  - (4) The owner/operator of the large wind energy facility shall remove the large wind energy facility and restore the site within 180 days of the date of the written notification of abandonment. If the owner/operator fails to remove the large wind energy facility within 180 days, the Town shall have the right, to the extent it is duly authorized by law, to enter onto the proposed site and physically remove the large wind energy facility and restore the site at the sole expense of the owner/operator.
- N. Technical review. Upon receipt of an application for a large wind energy facility, the Planning Board may engage professional and technical consultants, at the applicant's expense, pursuant to ~~M.G.L. Chapter~~ MGL c. 44, § 53G, to assist the Planning Board with its review of application materials. The Planning Board may direct the applicant to deposit funds with the Planning Board for such review at the time the application is accepted and to add additional funds as needed upon notice. Failure to comply with this subsection shall be grounds for denying the special permit application. Upon the approval or denial of the application, any excess amounts in the account attributable to the application process, including any interest accrued, shall be refunded to the applicant.
- O. Lapse of approval. Any special permit approved to construct, operate or modify a large wind energy facility pursuant to this bylaw shall automatically expire if the large wind energy facility is not installed and operating within two years from the date of approval or the large wind energy facility becomes abandoned as defined in Subsection M.

**§ 225-8.5 Small wind energy systems.**

- A. Purpose. The purpose of this section is to provide a permitting process for small wind energy systems (SWES) for individual homeowners so that they may be utilized in a cost-effective, efficient, and timely manner to increase the use of distributed generation; to integrate these systems into the community in a manner that minimizes their impacts on the character of neighborhoods, on property values, and on the scenic, historic, and environmental resources of the Town; and to protect health and safety, while allowing wind energy technologies to be utilized.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- B. Applicability. This section applies to the construction of all SWES in the Town of Cheshire after the effective date of this bylaw. This bylaw also applies to physical modifications to existing SWES that materially alter its number, type, location, height, or configuration.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

**AWEA RATED SOUND LEVEL**

The sound level of a SWES calculated as set forth in the American Wind Energy Association's Small Wind Turbine Performance and Safety Standard (AWEA 9.12009).

**SMALL WIND ENERGY SYSTEMS (SWES)**

A wind energy facility with a rated nameplate capacity of 10 kW or less and a height of 140 feet or less and the electricity generated is primarily used on-site.

**SYSTEM HEIGHT**

The height from existing grade of the fixed portion of the tower to the blade tip of the turbine at the highest point of its rotation.

**WIND ENERGY FACILITY**

All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, towers, wind turbines, foundations, stormwater control measures, service roads and other appurtenant structures, facilities and equipment.

**WIND TURBINE**

A device that converts kinetic wind energy into rotational energy that drives an electrical generator. A wind turbine typically consists of a nacelle body and a rotor with two or more blades.

- D. Use regulations. One or more SWES may be allowed on a lot in all zoning districts, only as an accessory use, after the issuance of a special permit in accordance with this section and § 225-10.1.
- E. Design requirements.
- (1) Height. The maximum permitted ~~System Height~~ system height is 140 feet.
- (2) Setbacks.
- (a) The minimum horizontal distance from the base of the tower structure to any property line or road right-of-way shall be 125% of the system height.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (b) The minimum horizontal distance from the base of the tower structure to any existing residence not occupied by the SWES applicant shall be at least 200 feet.
- (c) No part of the SWES, including guy wires and anchors, may extend closer to the property boundaries than the setbacks as set forth in § 225-4.2.
- (3) Unauthorized access. All SWES shall be designed and maintained to prevent unauthorized access.
- (4) Appearance. All SWES shall be painted a ~~non-reflective~~ nonreflective exterior color designed to blend with the surrounding environment. No decorations or lights shall be allowed, unless required by the Federal Aviation Administration (FAA).
- (5) Visual impacts. The SWES shall be located so as to minimize its visual impact on the neighborhood.
  - (a) To the extent practical, the SWES shall be screened from neighboring properties.
  - (b) All electrical conduits must be located underground.
  - (c) No logos, designs, or other signage shall exceed two square feet in total area.
- (6) Noise. The ~~AWEA Rated Sound Level~~ rated sound level of the SWES shall be 45 dB(A) or less. The operational noise of the SWES, as measured by the latest standards of the American National Standards Institute, shall not exceed 45 dB(A) or five dB(A) above ambient sound, whichever is less, for more than 15 minutes in any one day measured at an occupied dwelling. The Planning Board may waive the noise limit as to a particular parcel of real property, when written permission is granted by all individuals or entities with control over the affected real property and such permission is recorded with the North Berkshire Registry of Deeds on the title of the affected property.
- (7) Shadow and flicker. All SWES shall be sited in a manner that does not result in significant shadow/flicker impacts on occupied buildings. A significant shadow/flicker impact is defined as more than 30 hours of shadow/flicker hours per year on an occupied building. If significant shadow/flicker impacts occur, the owner of the SWES shall reduce the operation of the SWES or undertake other mitigation measures in order to decrease the time of shadow/flicker on any occupied building to less than 30 hours per year. Buildings occupied by the SWES applicant/owner are exempt from this requirement. The Planning Board may waive the shadow and flicker limit as to a particular parcel of real property, when written permission is granted by all individuals or entities with control over the affected real property and such permission is recorded with the North Berkshire Registry of Deeds on the title of the affected property.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**F. General requirements.**

- (1) **Compliance.** The construction, operation, maintenance and removal of SWES shall be consistent with all applicable local, state and federal requirements, including all applicable health, safety, construction, environmental, electrical, communications, aviation; and state building codes.
- (2) **Operation and maintenance.** The applicant shall maintain the SWES in good condition and operate the SWES in a safe manner.
- (3) **Standard.** Only SWES that meet the American Wind Energy Association's Small Wind Turbine Performance and Safety Standard (AWEA 9.1 - 2009) are allowed.
- (4) **Utility provider conditional approval.** The applicant shall demonstrate that it has received conditional approval to connect the SWES to the electric grid from the utility provider. Off-grid SWES are exempt from this requirement.

**G. Application process.** Applications for a SWES special permit shall be filed in accordance with § 225-10.1 and this section. An application for a SWES special permit must be prepared by a licensed engineer and contain the following:

- (1) **Site plan.** A site plan with the following information:
  - (a) Property lines and physical dimensions of the applicant's property.
  - (b) Location, dimensions; and types of existing major structures on the applicant's property and adjacent property only if the property is part of the ~~Fall Zone~~fall zone.
  - (c) Any easements located within the ~~Fall Zone~~fall zone.
  - (d) Location of the proposed SWES, foundations, guy anchors and associated equipment.
  - (e) Setback requirements as outlined in this ~~ordinance~~bylaw.
  - (f) The right-of-way of any public road that is adjacent to the property.
  - (g) Any overhead utility lines.
  - (h) Tower foundation blueprints or drawings.
  - (i) Tower blueprints or drawings.



**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (j) SWES specifications, including manufacturer, system blueprints, model, rotor diameter, tower height, tower type, braking mechanisms, safety features, and nameplate generation capacity.
- (k) SWES that will be connected to the electric grid shall include a copy of the conditional approval letter from the electric utility provider.
- (l) Sound level analysis prepared by the SWES manufacturer or qualified engineer, if required.
- (m) The applicant shall conduct a shadow and flicker analysis and submit its findings to the Planning Board. The shadow and flicker analysis shall, at a minimum, include a list of all off-site inhabited buildings estimated to receive 30 or more shadow/flicker hours per year.
- (n) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to all applicable state building codes and electrical codes.

(o) Evidence of compliance or ~~non-applicability~~nonapplicability with FAA regulations.

(p) List of abutters to the applicant's property.

(2) Operation and maintenance plan. A plan which sets forth the general procedures for safe and effective operation and maintenance of the SWES, including guy wires, anchors, support structures, and lubricants.

(3) SWES removal plan. A plan for the removal of the SWES once it has reached the end of its useful life or is abandoned.

(4) Additional information. Additional information as requested by the Planning Board.

H. Technical review. The special permit granting authority may hire an expert, at the applicant's expense and in accordance with ~~M.G.L. Chapter~~MGL c. 44, § 53G, to assist the special permit granting authority with the technical review of application materials.

I. Abandonment and removal.

(1) A SWES shall be deemed abandoned when the SWES has not been in operation for a period of 12 months.

(2) After 12 months of ~~non-operation~~nonoperation, the Building Inspector shall provide written notification to the owner/operator that such SWES is presumed to be abandoned. The owner/operator has 30 days to rebut the presumption of abandonment by submitting evidence that the SWES has been in operation during the relevant twelve-month period.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (3) If the owner/operator does not respond within the thirty-day appeal period or does not submit evidence that, in the discretion of the Building Inspector, proves that the SWES has been in operation for the relevant twelve-month period, then the SWES shall be deemed abandoned. The Building Inspector shall provide written notification of abandonment to the owner/operator.
- (4) The owner/operator of the SWES shall remove the SWES and restore the site within 180 days of the date of the written notification of abandonment. If the owner/operator fails to remove the SWES within 180 days, the Town shall have the right, to the extent it is duly authorized by law, to enter onto the proposed site and physically remove the SWES and restore the site at the sole expense of the owner/operator.
- J. Lapse of approval. Any special permit approved to construct, operate or modify a SWES pursuant to this Bylaw shall automatically expire if the SWES is not installed and operating within one year from the date of approval or the SWES becomes abandoned or discontinued.

**§ 225-8.6 Solar photovoltaic installations.**

- A. Purpose. The purpose of this section is to provide a permitting process for solar photovoltaic installations so that they may be utilized in a cost-effective, efficient, and timely manner to increase the use of distributed generation; to integrate these installations into the community in a manner that minimizes their impacts on the character of neighborhoods, on property values; and on the scenic, historic, and environmental resources of the Town; and to protect health and safety, while allowing solar photovoltaic technologies to be utilized.
- B. Applicability. This section applies to solar photovoltaic installations proposed to be constructed after the effective date of this bylaw. This section also applies to material modifications that alter the type, number, configuration or size of the solar photovoltaic installation.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

**IMPERVIOUS AREA OF A SOLAR PANEL**

The area of impervious surface of a solar panel shall be calculated as if the solar panel projects straight down to the ground on each side, as illustrated in the figure below.

[Image]

**LARGE-SCALE SOLAR PHOTOVOLTAIC INSTALLATION**

A ground-mounted solar photovoltaic installation that occupies 1/16th of an acre or more of a lot or occupies less than 1/16th of an acre of a lot, but the electricity generated is used primarily for off-site consumption.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**SMALL-SCALE SOLAR PHOTOVOLTAIC INSTALLATION**

Any size roof-mounted or building-mounted solar photovoltaic installation or a ground-mounted solar photovoltaic installation that occupies less than 1/16th of an acre of a lot and the electricity generated is used primarily for on-site consumption.

**SOLAR PHOTOVOLTAIC INSTALLATION**

A device, structure, or structural design feature, a substantial purpose of which is to provide for the collection, storage and distribution of solar energy for space heating or cooling, generation of electricity; or water heating. This includes appurtenant equipment for the collection, storage and distribution of electricity to buildings or to the electric grid.

**D. Small-scale solar photovoltaic installations.**

- (1) A small-scale solar photovoltaic installation may be allowed as a primary use or an accessory use in all zoning districts.
- (2) A small-scale solar photovoltaic installation may only be constructed or materially modified after the issuance of a building permit by the Building Inspector.
- (3) A small-scale solar photovoltaic installation proposed to be mounted on a building or rooftop may protrude no higher than the highest point of the roofline, except as provided below.
  - (a) A small-scale solar photovoltaic installation proposed to be mounted on a building or rooftop may protrude above the highest point of the roofline, up to six feet above the highest point of the roofline, only by special permit ~~upon a finding by~~ from the Planning Board ~~that the waiver is in the public interest and that the waiver is consistent with the intent.~~ [Amended at time of the Zoning Bylaws adoption of Code]
- (4) A small-scale solar photovoltaic installation proposed to be ground-mounted may not exceed a height of 20 feet.
- (5) A small-scale solar photovoltaic installation proposed to be ground-mounted shall comply with all the setback requirements set forth in § 225-4.2, including solar photovoltaic installations being installed as an accessory structure.
- (6) All impervious surfaces of a small-scale solar photovoltaic installation, including solar photovoltaic panels, shall be included in the maximum %percentage lot coverage requirement in § 225-4.2 unless the small-scale solar photovoltaic installation or part thereof is installed over impervious surface that is already included in the calculation.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

E. Large-scale solar photovoltaic installations.

- (1) Use regulations. Large-scale solar photovoltaic installations may only be constructed or materially modified after the issuance of a special permit from the Planning Board in accordance with this section and § 225-10.1-"Special Permits", in all zoning districts.
- (2) Compliance. The construction, maintenance, operation, modification and removal of the large-scale solar photovoltaic installation shall comply with all applicable local, state, and federal requirements.
- (3) Site control. The applicant shall demonstrate legal control over the proposed site sufficient to allow for the construction and operation of the large-scale solar photovoltaic installation.
- (4) Utility provider conditional approval. The applicant shall demonstrate that it has received conditional approval to connect the large-scale solar photovoltaic installation to the electric grid from the utility provider. Off-grid installations are exempt from this requirement.
- (5) Operation and maintenance. The owner/operator of the large-scale solar photovoltaic installation shall maintain the large-scale solar photovoltaic installation and the site in good condition. This includes, but is not limited to, the maintenance of access roads, stormwater control measures, security measures and vegetation screening.
- (6) Liability insurance. Proof of liability insurance in an amount and form acceptable to the Planning Board shall be maintained until the large-scale solar photovoltaic installation has been removed. All subsequent owners/operators shall continue to provide proof of liability insurance, in the form and amount approved by the Planning Board, to the Building Inspector on an annual basis.
- (7) Financial surety.
  - (a) Applicants seeking to construct a large-scale solar photovoltaic installation shall provide a form of surety to cover the cost of removal and restoration of the site in the event the site is abandoned. The amount and form of surety shall be determined by the Planning Board, but in no event shall the amount exceed 125% of the cost of removal. Applicants shall submit a fully inclusive cost estimate, which accounts for inflation, of the costs associated with the removal of the large-scale solar photovoltaic installation prepared by a qualified engineer.
  - (b) No less than 90 days prior to the expiration of any financial surety required by this bylaw, the current operator of the large-scale solar photovoltaic installation shall provide the Building Inspector with renewed, extended or replacement financial surety in an amount and form determined by the Planning Board in accordance with this bylaw.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**(8) Design requirements.**

- (a) Height. Large-scale solar photovoltaic installations shall not exceed 20 feet in height.
- (b) Setbacks. Large-scale solar photovoltaic installations shall comply with the setback requirements set forth in § 225-4.2.
- (c) Lighting. No lighting of the solar photovoltaic installation is permitted, except for manually operated emergency lights for use only when operating personnel are on site.
- (d) Screening. The large-scale solar photovoltaic installations shall be screened year round with dense native vegetation from all adjoining properties and public and private ways.
- (e) Vegetation clearing. The clearing of vegetation shall be limited to that which is necessary for the construction, operation, maintenance, modification and removal of the large-scale solar photovoltaic installation.
- (f) Habitat fragmentation. All large-scale solar photovoltaic installations shall, to the fullest extent practicable, be clustered and located in or adjacent to areas of the site where the land has already been cleared to avoid habitat fragmentation.
- (g) Security measures. Large-scale solar photovoltaic installations shall be secured with a seven-foot-high fence constructed to prevent unauthorized persons from accessing the large-scale solar photovoltaic installation.
- (h) Signs. The owner/operator shall install signs at the large-scale solar photovoltaic installation as determined by the Planning Board in order to protect public safety.
- (i) Emergency access. Large-scale solar photovoltaic installations and access roads shall be constructed and maintained to allow for safe access by emergency vehicles.
- (j) Emergency response plan. Upon the request of the ~~fire chief~~Fire Chief or ~~police chief~~Police Chief, the owner/operator of the large-scale solar photovoltaic installation shall cooperate with all local public safety officials to develop and occasionally update an emergency response plan.
- (k) Underground utilities. All on-site utilities shall be located underground except where the utilities connect into the electric grid at the property boundary.
- (l) Maximum ~~%percent~~ coverage. All impervious surfaces of the large-scale solar photovoltaic installation, including solar photovoltaic panels, shall be included in the maximum ~~%percent~~ lot coverage requirement in § 225-4.2, unless the large-scale solar photovoltaic installation or part thereof is installed over impervious surface that is already included in the calculation.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- | (9) Filing requirements. Applicants seeking to construct or modify a large-scale solar photovoltaic installation shall submit the following information to the Planning Board. All maps to be submitted must be drawn at appropriate scales and be signed by a registered professional engineer or licensed surveyor. The Planning Board may, in its discretion, waive any of the filing requirements.
  - | (a) Contact information. Provide the applicant's and property owner's name, address, phone number, email address; and signature.
  - (b) Site identification. Provide the address and the map, lot and block number of the proposed site.
  - (c) Site plans. Provide site plans showing the following:
    - [1] Property lines of the proposed site.
    - [2] Elevation contour lines at two-foot vertical intervals.
    - [3] Outlines of all existing and proposed buildings and structures on the proposed site, including distances from the proposed large-scale solar photovoltaic installation.
    - | [4] Existing and proposed access roads, driveways, public ways, private ways; and recreational trails on the proposed site.
    - | [5] Detailed layout of the proposed large-scale solar photovoltaic installation, including but not limited to panel mounts, foundations, appurtenant equipment and fencing.
    - | [6] Detailed layout of the electric infrastructure to connect the large-scale solar photovoltaic installation to the electric grid or net metering equipment.
    - [7] Delineation of all wetland resources and associated buffer areas.
    - [8] Locations of rare, threatened or endangered species existing on the site.
    - [9] Proposed changes to the site, including grading, cut and fill, landscaping, native vegetation for screening and vegetation to be removed or altered.
    - [10] Engineering controls at the site and on the access road to control erosion and sedimentation both during construction and after construction as a permanent measure. Such engineering controls shall conform to the Massachusetts Department of Environmental Protection's Stormwater Policy.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

(d) Technical information. Provide the following information:

[1] Blueprints or drawings of the large-scale solar photovoltaic installation signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the installation and any potential shading from nearby trees or structures.

[2] One- or three-line electrical diagram detailing the solar photovoltaic installation, appurtenant equipment and electrical interconnection methods with all ~~National Electric~~ Massachusetts Electrical Code compliant devices. [Amended at time of adoption of Code]

[3] Documentation of the major large-scale solar photovoltaic installation components to be used, including but not limited to solar photovoltaic panels, panel mounts and inverter.

(e) Information sufficient to show that the proposed large-scale solar photovoltaic will conform to Subsection E(3) to (7).

(10) Technical review. Upon receipt of an application for a large-scale solar photovoltaic installation, the Planning Board may engage professional and technical consultants, at the applicant's expense, pursuant to ~~M.G.L. Chapter~~ MGL c. 44, § 53G, to assist the Planning Board with its review of application materials. The Planning Board may direct the applicant to deposit funds with the Planning Board for such review at the time the application is accepted and to add additional funds as needed upon notice. Failure to comply with this subsection shall be good grounds for denying the special permit application. Upon the approval or denial of the application, any excess amounts in the account attributable to the application process, including any interest accrued, shall be refunded to the applicant.

(11) Abandonment and removal.

(a) A large-scale solar photovoltaic installation shall be deemed abandoned when the large-scale solar photovoltaic installation has not been in operation for a period of 12 months.

(b) After 12 months of ~~non-operation~~ nonoperation, the Building Inspector shall provide written notification to the owner/operator that such large-scale solar photovoltaic installation is presumed to be abandoned. The owner/operator has 30 days to rebut the presumption of abandonment by submitting evidence to the Building Inspector that the large-scale solar photovoltaic installation has been in operation during the relevant twelve-month period.

(c) If the owner/operator does not respond within the thirty-day appeal period or does not submit evidence that, in the discretion of the Building Inspector, proves that the large-scale solar photovoltaic installation has been in operation for the relevant twelve-month period, then the large-

**Town of Cheshire**  
**PRELIMINARY DRAFT**

scale solar photovoltaic installation shall be deemed abandoned. The Building Inspector shall provide written notification of abandonment to the owner/operator.

- (d) The owner/operator of the large-scale solar photovoltaic installation shall remove the large-scale solar photovoltaic installation and restore the site within 180 days of the date of the written notification of abandonment. If the owner/operator fails to remove the large-scale solar photovoltaic installation within 180 days, the Town shall have the right, to the extent it is duly authorized by law, to enter onto the proposed site and physically remove the large-scale solar photovoltaic installation and restore the site at the sole expense of the owner/operator.
- (12) Lapse of approval. Any special permit shall automatically lapse if the large-scale solar photovoltaic installation is not installed and functioning within two years or the large-scale solar photovoltaic installation is abandoned as defined in Subsection E(11).

**§ 225-8.7 Marijuana establishments.**  
**[Added 6-11-2018 ATM by Art. 13]**

- A. Purpose. The purpose of this section is to provide for the placement of ~~Marijuana Establishments~~marijuana establishments (MEs) and ~~Medical Marijuana Treatment Centers~~medical marijuana treatment centers in suitable locations in the Town of Cheshire (the "Town") in recognition of and in accordance with "The Regulation of the Use and Distribution of Marijuana Not Medically Prescribed," ~~M.G.L.~~MGL c. 94G, and "Medical Use of Marijuana", ~~M.G.L.~~MGL c. 94I. The specific purpose of this section is to safeguard the built environment by permitting compliance with state law in a manner consistent with community and neighborhood concerns, while also ensuring that those entities permitted to operate a ME or ~~Medical Marijuana Treatment Center~~medical marijuana treatment center, as defined herein, comply with the relevant provisions of Chapter 334 of the Acts of 2016, Chapter 351 of the Acts of 2016, Chapter 55 of the Acts of 2017, and the regulations promulgated by the Cannabis Control Commission (CCC) found at 935 CMR 500.000 and ~~495~~935 CMR ~~725~~501.000 et seq. **[Amended at time of adoption of Code]**
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

**CRAFT MARIJUANA COOPERATIVE**

A ~~Marijuana Cultivator~~marijuana cultivator comprised of residents of the commonwealth organized as a limited-liability company or limited-liability partnership under the laws of the commonwealth, or an appropriate business structure as determined by the CCC, and that is licensed to cultivate, obtain, manufacture, process, package and brand marijuana and ~~Marijuana Products~~marijuana products to deliver marijuana to MEs but not to consumers.

**INDEPENDENT TESTING LABORATORY**

A laboratory that is licensed by the CCC and is:



**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (1) Accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the eCommission;
- (2) Independent financially from any medical marijuana treatment center or any licensee or ME for which it conducts a test; and
- (3) Qualified to test marijuana in compliance with 935 CMR 500.160 and ~~M.G.L.~~MGL c. 94C, § 34.

**LICENSE**

The certificate issued by the CCC that confirms that a ME has met all applicable requirements pursuant to St. 2012~~6~~, c. 334, as amended by St. 2017, c. 55 and 935 CMR 500.000. A ME may be eligible for a provisional or final license.

[Amended at time of adoption of Code]

**MARIJUANA CULTIVATION FACILITIES**

Facilities that a ~~Marijuana Cultivator~~marijuana cultivator may be licensed to operate.

**MARIJUANA CULTIVATOR**

An entity licensed to cultivate, process; and package marijuana; to deliver marijuana to MEs; and to transfer marijuana to other MEs but not consumers.

**MARIJUANA ESTABLISHMENT (ME)**

~~A Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, A~~  
marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer, marijuana retailer, independent testing laboratory, marijuana research facility, marijuana transporter or any  
other type of licensed marijuana-related business, except a medical marijuana treatment center.

**MARIJUANA PRODUCT MANUFACTURER**

An entity licensed to obtain, manufacture, process; and package marijuana and ~~Marijuana Products~~marijuana products; to deliver marijuana and ~~Marijuana Products~~marijuana products to other MEs, and to transfer marijuana and ~~Marijuana Products~~marijuana products to other MEs but not consumers.

**MARIJUANA PRODUCTS**

Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**MARIJUANA RETAILER**

An entity licensed to purchase and deliver marijuana and ~~Marijuana Products~~marijuana products from MEs and to deliver, sell, or otherwise transfer marijuana and ~~Marijuana Products~~marijuana products to other MEs and to consumers.

**MARIJUANA TRANSPORTER**

An entity, not otherwise licensed by the CCC, that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to MEs, but not to consumers.

**MEDICAL MARIJUANA TREATMENT CENTER**

A not-for-profit entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.

**MICROBUSINESS**

A ~~collocated~~ ME that can be either a Tier 1 ~~Marijuana Cultivator~~marijuana cultivator or ~~Product Manufacturer~~product manufacturer, or both, in compliance with the operating procedures for each license. A ~~Microbusiness~~ that is a ~~Marijuana Product Manufacturer~~marijuana product manufacturer may purchase no more than 2,000 pounds of marijuana per year from other MEs.

**RESEARCH FACILITY**

An entity licensed to engage in research projects by the CCC.

C. Designated locations for MEs and medical marijuana treatment centers.

- (1) ~~Marijuana Cultivation Facilities~~cultivation facilities may be sited within the Agricultural Residential (A-R) ~~Zone~~Zone district on parcels at least five acres in size, upon the approval of a ~~Special Permit~~special permit and ~~Site Plan~~site plan, as per Article X of the Zoning Bylaw and the Town of Cheshire Special Permit Rules and Regulations.
- (2) ~~Medical Marijuana Treatment Centers~~marijuana treatment centers and all types of ME's, except for ~~Cultivation Facilities~~cultivation facilities, may be sited in the Marijuana Overlay District (Figures 1a and 1b, below), upon the approval of a ~~Special Permit~~special permit and ~~Site Plan~~site plan, as per Article X of the Zoning Bylaw and the Town of Cheshire Special Permit Rules and Regulations.
- (3) All ME's or ~~Medical Marijuana Treatment Centers~~medical marijuana treatment centers must be set back at least 500 feet from any public or private school or licensed ~~daycare~~day-care center.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

Distances shall be measured by a straight line between the nearest structures of said schools or ~~daycares~~day-cares and the nearest building used for marijuana purposes.

- (4) Each ME or ~~Medical Marijuana Treatment Center~~medical marijuana treatment center and any part of their operation, including, but not limited to, cultivation, processing, packaging, and sales, shall be operated from a fixed location. No marijuana establishment shall be permitted to operate from a moveable, mobile, or transitory location, except for ~~Marijuana Transporters~~marijuana transporters, as defined in 935 CMR 500.002.

[Image]

Figure 1a (entire overlay district)

[Image]

Figure 1b (detail of most of overlay district, except the single northernmost property)

D. Designated number of marijuana establishments and medical marijuana treatment centers.

- (1) The total number of MEs operated by a ~~Marijuana Retailer~~marijuana retailer shall not be greater than one, except that in no instance shall the number of retailers be fewer than 20%~~,%~~ of the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be drunk on the premises, as set forth in ~~G.L.MGL c. 94G Section, § 3(a)(2)(ii)~~. Fractions of establishments shall be rounded up to the nearest whole number. [Amended at time of adoption of Code]
- (2) The total number of ~~non-retailer~~nonretailer MEs shall not exceed six. ~~Amend at Town Meeting from one.~~
- (3) The total number of ~~Medical Marijuana Treatment Centers~~medical marijuana treatment centers shall not exceed one.
- (4) In the event that the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be drunk on the premises decreases, any ME, if then exceeding the limits as noted in Subsection D(1), may remain in operation.

E. Special permit required. No ME or ~~Medical Marijuana Treatment Center~~medical marijuana treatment center shall be operated or expanded without first obtaining a ~~Special Permit~~special permit from the Town of Cheshire ~~Special Permit Granting Authority~~special permit granting authority in accordance with Article X of the Zoning Bylaw and the Town of Cheshire Special Permit Rules and Regulations.

- (1) The ~~Special Permit Granting Authority~~special permit granting authority for any ME or ~~Medical Marijuana Treatment Center~~medical marijuana treatment center shall be the Planning Board.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (2) A ~~Special Permits~~special permit shall only be valid for use by the Applicant and will become null and void upon the sale or transfer of the license of ~~an ME or Medical Marijuana Treatment Center~~medical marijuana treatment center or change in the location of the business.
  - (3) In the event that the ~~Commonwealth's~~licensing authority suspends the license or registration of an ME, the ~~Special Permits~~special permit shall be so suspended by the Town until the matter is resolved to the satisfaction of said licensing authority.
  - (4) The ~~Special Permits~~special permit shall be considered null and void if meaningful construction has not begun on the project within six months of obtaining said permit, as determined by the Building Inspector or their designee(s).
- F. Site plan review. Applications to operate or expand ~~an ME or Medical Marijuana Treatment Center~~medical marijuana treatment center shall be subject to Article X of the Zoning Bylaw and the Town of Cheshire Special Permit Rules and Regulations. The site plan shall be submitted in conjunction with the ~~Special Permits~~special permit application and joined to the final approval for the ~~Special Permits~~special permit.
- G. General requirements for MEs and medical marijuana treatment centers.
- (1) Outside storage. No outside storage of marijuana, marijuana products, related supplies, or educational materials is permitted, except at open-air, outdoor cultivation facilities.
  - (2) Visibility of activities. All activities shall be conducted indoors, except for open-air, outdoor cultivation facilities or ~~Marijuana Transporters~~marijuana transporters.
  - (3) Paraphernalia. Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes; and vaporizers, may be lawfully sold at a marijuana retailer. No retail marijuana, marijuana products; or paraphernalia shall be displayed or kept in a retail marijuana store so as to be visible from outside of the licensed premises.
  - (4) Hours of operation. A marijuana retailer may not open earlier than 8:00 a.m. and shall close no later than 8:00 p.m. the same day, Monday through Saturday, and no earlier than 12:00 p.m. and no later than 6:00 p.m. on Sunday. There shall be no hourly restrictions on any other type of ME or ~~Medical Marijuana Treatment Center~~medical marijuana treatment center, unless ~~imposed by the Special Permit Granting Authority~~special permit granting authority as part of site plan approval.
  - (5) On-site consumption of marijuana. On-site consumption is prohibited on or within the premises of any ME, except for ~~Research Facilities~~research facilities.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (6) ~~Sale of alcohol. ME's or Medical Marijuana Treatment Centers~~ medical marijuana treatment centers are prohibited from selling alcoholic beverages.
- H. Filing requirements for MEs or medical marijuana treatment centers. Applications must be submitted to the Planning Board and shall include the following:
  - (1) A ~~Site Plan~~ site plan, as per the requirements of the Town of Cheshire Special Permit Rules and Regulations.
  - (2) A security plan. A security plan shall be submitted to ensure the safety of employees, patrons; and the public to protect the premises from theft or other criminal activity. The security plan shall be reviewed and approved by the local Police Chief, or their designee. The ~~Security Plan~~ security plan shall include the following:
    - (a) An interior ~~floor plan~~ floor plan (including secured areas, windows, doors, etc.).
    - (b) Exterior lighting.
    - (c) Fencing (if any).
    - (d) Gates (if any).
    - (e) Alarms.
    - (f) Any other security measures as requested by the Police Chief.
  - (3) State license. A copy of the license or registration as ~~an~~ a ME from the Massachusetts Cannabis Control Commission or documentation that demonstrates that said facility and its owner/operators qualify and are eligible to receive a ~~C~~ certification of ~~R~~ registration and meet all of the requirements of ~~an~~ a ME in accordance with the regulations adopted by the Commission, as amended. Proof of license may also be accepted from the State Department of Health under certain circumstances for ~~Medical Marijuana Treatment Centers~~ medical marijuana treatment centers.
- I. Discontinuance of use. Any marijuana use under this ~~S~~ section shall be required to remove all material, plants, equipment; and other paraphernalia in compliance with regulations established by the Cannabis Control Commission within 30 days after the expiration or voiding of its license.
- J. No ~~t~~ Town liability; indemnification.
  - (1) The ~~A~~ applicant and all licensees waive and release the Town, its elected officials, employees; and agents from any liability for injuries, damages; or liabilities of any kind that result from any arrest or prosecution of the ME or ~~Medical Marijuana Treatment Center~~ medical marijuana treatment

**Town of Cheshire**  
**PRELIMINARY DRAFT**

center owners, operators, employees, clients, or customers for a violation of state or federal laws, rules, or regulations.

- (2) The Applicant, in receiving approvals issued pursuant to this chapter, and all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the Town, its elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, arising out of or in any manner connected with the operation of any ME or ~~Medical Marijuana Treatment Center~~ medical marijuana treatment center that is subject of the approval/license.

K. Other laws remain applicable.

- (1) Business license required. At all times while a permit is in effect, the licensee shall possess a valid license.
- (2) To the extent that the state has adopted or adopts in the future any additional or stricter law or regulation governing the cultivation, manufacturing, testing, research or retail of marijuana or ~~Marijuana Products~~ marijuana products, the additional or stricter regulation shall control the ME or ~~Medical Marijuana Treatment Center~~ medical marijuana treatment center in the Town. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.
- (3) Prior to the issuance of a ~~Special Permits~~ special permit, the ME or ~~Medical Marijuana Treatment Center~~ medical marijuana treatment center must have entered into a ~~Host Community Agreement~~ host community agreement (HCA) with the Town. If, upon review by the ~~Special Permit Granting Authority~~ special permit granting authority, the ME or ~~Medical Marijuana Treatment Center~~ medical marijuana treatment center is found to not be fully in compliance with the HCA, the ~~Special Permits~~ special permit and/or the local license may be suspended or rescinded.

**Article IX**  
**Overlay District Regulations**

§ 225-9.1 **Flood-prone area and wetland regulations.**

- A. Purpose of regulations. The purpose of these regulations is: [Amended at time of adoption of Code]

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (1) To provide that lands in the Town subject to seasonal or periodic flooding shall not be used for residence or other purposes in such a manner as to endanger the health or safety of the occupants thereof or of the public generally.
- (2) To protect, preserve and maintain the water table and water recharge areas within the Town so as to preserve the present and potential water supplies for the public health and safety of the Town's residents.
- (3) To assure the continuation of the natural flow pattern of the ~~water courses~~watercourses within the Town in order to provide adequate and safe floodwater storage capacity to protect persons against the hazards of flood inundation.

B. Required application. Any person desiring to establish any permitted use in the Flood Plain District involving or requiring the erection or new or alteration or moving of existing structures, or dumping, filling, transferring, relocation, or excavation of earth materials, or storage of materials or equipment, shall submit an application to the Planning Board for a special permit, describing in detail the proposed use of property and the work to be performed, accompanied by plans showing:

- (1) The location, boundaries and dimensions of the lot and existing and proposed structures, ~~water courses~~watercourses and drainage easements, fill, means of access, and sewage disposal facilities;
- (2) Mean sea level elevation, with two-foot or less contour separation, of the existing and proposed developed areas, ~~access ways~~accessways, outdoor storage areas, and proposed surface of cellar and first floor structures.

C. Restrictions and conditions.

(1) The Planning Board may issue a special permit with such conditions, as it deems necessary in the interest of the public health, safety and welfare. Without limiting the generality of the foregoing, the Board shall ensure:

(1a) That the proposed construction, use or change of grade will not obstruct or divert the flood flow, reduce natural storage, or increase stormwater runoff so that water levels on other land are substantially raised, or danger from flooding is increased;

(2b) That safe vehicular and pedestrian movement to, over, and from the premises is provided in the event of flooding;

(3c) That the proposed methods of drainage and sewage disposal are approved by the Board of Health, and will not cause pollution or otherwise endanger health in the event of flooding;

**Town of Cheshire**  
**PRELIMINARY DRAFT**

(42) Granting of a special permit by the Planning Board under this section does not indicate in any way compliance with the provisions of the Wetlands Protection Act, Chapter MGL c. 131, § 40 of the General Laws.

D. Prohibitions. No dwelling or industrial building shall be constructed in the Flood Plain District, nor shall land fill be permitted.

**§ 225-9.2 Flood Hazard District regulations.**

A. Purpose of ~~D~~district. The following regulations meet the minimum requirements of the National Flood Insurance Program and are administered by the Building Inspector in consultation with the Town of Cheshire Board of Health.

B. Location of ~~Overlay District~~overlay district. The Flood Hazard District is herein established as an overlay district. The underlying permitted uses are allowed, provided that they meet the following additional requirements as well as those of the Massachusetts State Building Code dealing with construction in ~~flood plains~~floodplains. The Flood Hazard District includes all special flood hazard areas designated as Zone A, A1-A2-A4 in the Town of Cheshire Flood ~~insurance rate-~~mapsInsurance Rate Maps (FIRM), and the flood boundary and floodway maps dated July 19, 1982, on file with the Town Clerk and Building Inspector. These maps, as well as the accompanying Town of Cheshire Flood Insurance Study, are incorporated herein by reference.

C. Development regulations. The following requirements apply in the Flood Hazard District:

(1) Within Zone A, wherever the base flood elevation is now provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.

(2) In the floodway, designated on the ~~flood boundary~~Flood Boundary and ~~floodway map~~Floodway Map, the following provisions shall apply:

(a) All encroachments, including fill, new construction, substantial improvement to existing structures and other development are prohibited unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increased flood levels during the occurrence of the 100-year flood; and

(b) Any encroachment meeting the above standard shall comply with the ~~flood plain~~floodplain requirements of the State Building Code; and

(c) All public utilities and facilities, such as sewer, gas, electrical and water systems, shall be located and constructed to minimize or eliminate flood damage; and



**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (d) Adequate drainage systems shall be provided to reduce exposure to flood hazards; and
- (e) Base flood elevation (the level of the 100-year flood) data shall be provided by the applicant for proposals greater than 50 lots or five acres, whichever is less, for that portion within the Flood Hazard District.

(3) Within Zone A-A1-A2-A4, all mobile homes shall provide that:

- (a) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level;
- (b) Adequate surface drainage and access for a hauler are provided;
- (c) In the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than 10 feet apart, and reinforcement is provided for piers more than six feet above ground level; and
- (d) The placement of mobile homes, except in an existing mobile home park or mobile home subdivision, are prohibited in the floodway.

**§ 225-9.3 Water Supply Protection District regulations.**

- A. Purpose: ~~To~~ promote the health, safety and welfare of the community by protecting, conserving and maintaining the quality and safe yield of the Town's public water supply resources from detrimental land uses and activities.
- B. Overlay ~~D~~istrict. The Water Supply Protection District is an overlay district superimposed on the existing zoning districts established in this ~~B~~ylaw. All regulations of the Town of Cheshire's Zoning Bylaw applicable to such districts shall remain in effect, except that where the Water Supply Protection District imposes additional regulations, such regulations shall prevail.
- C. Applicability. This bylaw shall not apply to structures or uses in existence or lawfully begun, or to a building permit or special permit issued before the first publication of the notice of the ~~Public Hearing~~ public hearing of this bylaw (May 2, 1998); nor shall it apply to the use of land for the primary purpose of agriculture, horticulture, floriculture or viticulture consistent with ~~M.G.L. Chapter~~ MGL c. 40A-Section, § 3, except where specifically addressed in this bylaw.
- D. Location of ~~D~~istrict. For the purpose of this ~~B~~ylaw, there is hereby established within the Town of Cheshire a Water Supply Protection District, which consists of the Zone I and II areas (DEP- approved recharge area) in the Town of Cheshire. The district is defined and bounded as shown on a map entitled "Zoning Map of Cheshire, Massachusetts", dated June 8, 2015, and on file in the ~~T~~office of the Town Clerk; said map and all explanatory matter thereon are hereby declared to be part of this ~~B~~ylaw.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

E. District boundary disputes. The determination of the location and extent of the Water Supply Protection District (Zone II) shall be in conformance with the criteria set forth in 310 CMR 22.00 and in DEP's Guidelines and Policies for Public Water Systems.

F. Prohibited uses. The following uses and activities are strictly prohibited within the Water Supply Protection District:

(1) Landfills and open dumps as defined by 310 CMR 19.006, junkyards and automobile graveyards.

(2) Landfilling or storage of sludge and septage.

(3) The dumping and disposal of snow or ice removed from outside the Water Supply Protection District that contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals for snow and ice removal.

(4) Facilities that generate, treat, store or dispose of hazardous wastes that are subject to ~~M.G.L. Chapter~~MGL c. 21C and 310 CMR 30.00, except for the following:

(a) Very small quantity generators as defined by 310 CMR 30.00 (facilities that produce or handle ~~220 lbs~~pounds or less of hazardous wastes per month);

(b) Household hazardous waste centers and events under 310 CMR 30.390;

(c) Waste oil retention facilities as required by ~~M.G.L. Chapter~~MGL c. 21, § 52A;

(d) Water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters.

(5) The removal of soil, loam, sand, gravel or any other mineral substances<sup>1</sup> within four feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the material is redeposited within 45 days of removal on site to achieve a final grading greater than four feet above the historical high water table, except for excavations for the construction of building foundations or the installation of utility works.

(6) Storage of liquid petroleum products with the following exceptions:

(a) Normal household, outdoor maintenance or structure heating uses.

(b) Waste oil retention facilities and emergency generators required by statute, rule or regulation.

(c) Treatment works approved under 314 CMR 5.00 for treating ground and surface water.

## Town of Cheshire

### PRELIMINARY DRAFT

(d) For the above exceptions the storage must be in freestanding containers within a building or above ground. An ~~above-ground~~aboveground storage container requires secondary containment to contain a spill equal to the container's total storage capacity.

(7) ~~Non-sanitary~~Nonsanitary wastewater treatment facilities, except for the replacement or repair of existing systems which treat contaminated ground or surface water, and facilities approved by the Massachusetts Department of Environmental Protection (DEP).

G. Conditional uses. The following uses are strictly prohibited from the Water Supply Protection District unless they are accomplished in accordance with the specified performance standards:

(1) Storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

(2) Storage of commercial fertilizers and soil conditioners, as defined in ~~M.G.L. Chapter~~MGL c. 128, § 64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

(3) Animal manure will be stored in a manner to prevent leaching of contaminants into groundwater in accordance with specifications of the Natural Resources Conservation Services.

(4) Storage of liquid hazardous materials, as defined in ~~M.G.L. Chapter~~MGL c. 21E, unless such storage is either in a ~~free-standing~~freestanding container within a building, or in a ~~free-standing~~freestanding container above ground level with protection adequate to contain a spill the size of the container's total storage capacity.

(5) The rendering impervious of more than 15% of a lot, or 2,500 square feet, whichever is greater, unless a system for artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality.

H. Severability. A determination that any portion or provision of this bylaw is invalid shall not invalidate any other portion or provision thereof.

## Article X

### Special Permits and Variances

#### § 225-10.1 Special permits.

This ~~Bylaw~~ provides for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit.

**Town of Cheshire**

**PRELIMINARY DRAFT**

- A. ~~Special Permit Granting Authority~~ permit granting authority (SPGA). Any ~~B~~board designated as the SPGA in this ~~B~~bylaw may hear and decide applications for special permits upon which such ~~B~~board is specifically authorized to act under this ~~B~~bylaw and in accordance with the provisions of ~~M.G.L. Chapter~~ MGL c. 40A, § 9.
- B. Application filing procedures. An application for a special permit shall be filed with the Town Clerk and a copy of the application, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the SPGA.
- C. Withdrawal. An application for a special permit may only be withdrawn as set forth in ~~M.G.L. Chapter~~ MGL c. 40A, § 16.
- D. Public hearing. The SPGA shall hold a public hearing, for which notice has been given as set forth in ~~M.G.L. Chapter~~ MGL c. 40A, § 9, within 65 days after the filing of a complete application.
- E. Required findings. Before granting a special permit for any use requiring such permit under the provisions of this ~~B~~bylaw, the SPGA shall find that the proposed use:
- (1) Is in compliance with all provisions and requirements of this ~~B~~bylaw and in harmony with its general intent and purpose;
  - (2) Is essential or desirable to the public convenience or welfare at the proposed location;
  - (3) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
  - (4) Will not create undue traffic congestion or unduly impair pedestrian safety.
  - (5) Will not overload any public water, drainage or sewer system or any other municipal facility to such extent that the proposed use or any existing use in the immediate area of the Town will be unduly subjected to hazards affecting the public health, safety or general welfare.
- F. Conditions. Special permits may be granted with reasonable conditions, safeguards and limitations on time and use that the SPGA deems necessary to serve the purpose and intent of this ~~B~~bylaw.
- G. Required vote. Special permits issued by a SPGA shall require an affirmative vote of at least four members of a ~~five-member~~ board and a unanimous vote of a ~~three-member~~ board.
- H. Time for decision. The SPGA shall take final action on special permit applications within 90 days following the date of the close of the public hearing.

**Town of Cheshire**

**PRELIMINARY DRAFT**

- I. Notice of decision. Notice of decisions shall be provided as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 11.
- J. Constructive approval. Failure by the SPGA to take final action upon an application for a special permit within said 90 days following the date of the close of the public hearing shall be deemed to be a grant of the permit applied for.
- K. Recording. Special permits shall not take effect until the decision has been recorded as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 11.
- L. Lapse. Special permits granted under this section shall lapse one year from the date of issuance, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by date except for good cause.
- M. Repetitive applications. A repetitive application for a special permit shall be handled as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 16.
- N. Rules and regulations. A SPGA shall adopt and from time to time amend the rules relative to the issuance of such permits, and shall file a copy of said rules in the office of the Town Clerk. Such rules may prescribe the fees, size, contents, style and number of copies of plans and specifications and the procedures for the submission and approval of such permits.
- O. Technical review fees. Upon submission of an application for a special permit under this ~~S~~section, the SPGA may hire independent consultants to assist the SPGA in the review of the application, whose services shall be paid for by the applicant(s) in accordance with ~~Chapter~~MGL c. 44, § 53G, of the Massachusetts General Laws.

**§ 225-10.2 Variances.**

The Zoning Board of Appeals shall have the power to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of this ~~B~~bylaw.

- A. Petition filing procedures. A petition for a variance shall be filed with the Town Clerk and a copy of the petition, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the Zoning Board of Appeals.
- B. Withdrawal. A petition for a variance may only be withdrawn as set forth in ~~M.G.L.~~MGL Chapter 40A, § 16.
- C. Public hearing. The Zoning Board of Appeals shall hold a public hearing, for which notice has been given as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 10, within 65 days from its receipt of notice by the Board of such appeal, application or petition.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

D. Required findings. Before granting any variance, the Zoning Board of Appeals must find that:

- (1) Owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;
- (2) A literal enforcement of the provisions of this ~~B~~bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant; and
- (3) Desirable relief may be granted without substantial detriment to the public good without nullifying or substantially derogating from the intent and purpose of this ~~B~~bylaw.

E. Use variances. No variance may authorize a use or activity not otherwise permitted in the district in which land or structure is located; provided, however, that such variances properly granted prior to January 1, 1976, but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date.

F. Required vote. The issuance of a variance shall require a unanimous vote of the three-member Zoning Board of Appeals.

G. Time for decision. The Zoning Board of Appeals shall act on a petition for a variance within 100 days from the date the petition is filed with the Board.

H. Conditions. The Zoning Board of Appeals may impose conditions, safeguards and limitations, both of time and of use, including the continued existence of any particular structures, but excluding any conditions, safeguards or limitations based upon the continued ownership of the land or structure to which the variance pertains by the applicant, petitioner or any owner.

I. Notice of decision. Notice of decisions shall be provided as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 11.

J. Constructive approval. Failure by the Zoning Board of Appeals to act upon a petition for a variance within said 100 days from the date of the filing of the petition shall be deemed to be a grant of the variance applied for.

K. Recording. Variances shall not take effect until the decision has been recorded as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 11.

L. Lapse. If the rights authorized by a variance are not exercised within one year of the date of the grant of such variance they shall lapse, and may be reestablished only after notice and a new hearing pursuant to this section.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- M. Repetitive petitions. A repetitive petition for a variance shall be handled as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 16.

**Article XI**  
**Administration, Enforcement and Appeals**

**§ 225-11.1 Zoning Board of Appeals.**

A. Establishment, ~~A~~appointment and ~~R~~removal.

- (1) A Zoning Board of Appeals is hereby established for the Town of Cheshire, said Board to consist of three members and three associate members.
- (2) The Board of Selectmen shall appoint members and associate members of the Board of Appeals for terms of such length and so arranged that the term of one member shall expire each year.
- (3) The Zoning Board of Appeals shall elect annually a ~~e~~Chairman from its own number and a ~~e~~Clerk, and may, subject to appropriation, employ experts and clerical and other assistants.
- (4) Any member may be removed for cause by the Board of Selectmen upon written charges and a public hearing.
- (5) Vacancies shall be filled for unexpired terms in the same manner as original appointments.
- (6) The Chairman of the Zoning Board of Appeals may designate any associate member to sit on the Board in case of absence, inability to act or conflict of interest on the part of the member thereof or in the event of a vacancy on the Board until said vacancy is filled in the manner provided in this section.

B. Powers of the ~~zoning board~~Zoning Board of appeals~~-Appeals~~.

(1) The Zoning Board of Appeals shall have the following powers:

- (1a) To hear and decide appeals in accordance with § 225-11.4 of this B~~h~~ylaw.
- (2b) To hear and decide applications for special permits upon which the Board is empowered to act under this B~~h~~ylaw.
- (3c) To hear and decide petitions for variances as set forth in § 225-10.2.
- (42) In exercising the powers granted in this B~~h~~ylaw, the Zoning Board of Appeals may, in conformity with the provisions of Chapter 40A, make orders or decisions, reverse or affirm in whole or in part,

**Town of Cheshire**  
**PRELIMINARY DRAFT**

or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

- C. Rules and regulations. The Zoning Board of Appeals shall adopt rules and regulations not inconsistent with the provisions of this ~~B~~bylaw for conduct of its business and otherwise carrying out the purposes of said Chapter 40A, and shall file a copy of such rules in the office of the Town Clerk.
- D. Fees. The Zoning Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals; and applications for comprehensive permits.

**§ 225-11.2 Planning Board.**

- A. Establishment. The Town has voted to establish the existing Planning Board, under ~~M.G.L. Chapter~~MGL c. 41, § 81A, and the members of the Planning Board now in office shall serve as members of the Planning Board under ~~Section~~§ 81A, with all the powers and duties allowed planning boards as detailed in ~~M.G.L.~~MGL c. 41-§. §§ 81A through 81GG, inclusive.
- B. Powers of the Planning Board. The Planning Board shall have the following powers in addition to those established by the General Laws:
  - (1) To hear and decide applications for special permits upon which the Planning Board is empowered to act under this ~~B~~bylaw.
- C. Associate member. The Planning Board is authorized to have one associate member. The associate member shall be appointed for a three-year term by a majority vote of the members of the Planning Board and the Board of Selectmen. The Chairman of the Planning Board may designate the associate member to sit on the Planning Board for the purposes of acting on a special permit application, or any other matter for which a quorum is required, in case of an absence, inability to act or conflict of interest on the part of any member of the Board or in the event of a vacancy on the Board.
- D. Rules and regulations. The Planning Board shall adopt rules and regulations not inconsistent with the provisions of this ~~B~~bylaw for conduct of its business and otherwise carrying out the purposes of said Chapter 40A, and shall file a copy of such rules in the office of the Town Clerk.
- E. Fees. The Planning Board may adopt reasonable administrative fees and technical review fees.

**§ 225-11.3 Enforcement.**

- A. Enforcement agent. The Building Inspector shall be charged with the enforcement of this ~~B~~bylaw and shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of this ~~B~~bylaw; and



## Town of Cheshire

### PRELIMINARY DRAFT

no permit or license shall be granted for a new use of a building, structure or land which use would be in violation of this B~~h~~ylaw.

- B. Request for enforcement. If the Building Inspector is requested in writing to enforce this B~~h~~ylaw against any person allegedly in violation of the same and declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within 14 days of receipt of such request.
- C. Penalty for violation. Any person who violates any of the provisions of this B~~h~~ylaw shall be fined not more than \$50 for each offense. Each day that such violation continues shall constitute a separate offense.

#### § 225-11.4 Administrative appeals to Zoning Board of Appeals.

- A. Standing to appeal. An appeal to the Zoning Board of Appeals may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this B~~h~~ylaw, by the Berkshire Regional Planning Commission, or by any person, including an officer or board of the T~~e~~own, or of an abutting town aggrieved by an order of the i~~n~~spector of b~~u~~ildings, or other administrative official in violation of any provisions of this B~~h~~ylaw.
- B. Procedures. The administrative appeal shall be filed within 30 days from the date of the order and a public hearing held as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 15.
- C. Required notice. Notice of the public hearing shall be provided as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 11.
- D. Administrative record. The Zoning Board of Appeals shall create a detailed record of the proceedings as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 15.
- E. Required vote. The reversal of an administrative decision of the Building Inspector shall require a unanimous affirmative vote of the three-member Zoning Board of Appeals.
- F. Time limit. The decision of the Zoning Board of Appeals shall be made within 100 days after the date of an appeal.
- G. Notice of decision. Notice of decisions shall be provided as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 15.
- H. Constructive approval. Failure by the Zoning Board of Appeals to render a decision or act within 100 days after the filing of an administrative appeal shall be deemed a grant of the appeal.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- I. Repetitive appeal. A repetitive appeal shall be handled as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 16.

**§ 225-11.5 Judicial appeals.**

- A. Appeal procedure. Any person aggrieved by a decision of the Zoning Board of Appeals or any SPGA may appeal the decision to a court of the ~~Commonwealth~~ as set forth in ~~M.G.L. Chapter~~MGL c. 40A, § 17.
- B. Independent legal counsel. The Town of Cheshire must provide any officer or ~~Board~~ with independent legal counsel for appealing a decision of the Zoning Board of Appeals or SPGA and for taking such a subsequent actions as parties are authorized to take.

**§ 225-11.6 No public hearings on election day.**

No public hearing shall be held on any day on which a state or municipal election, caucus or primary is held in the ~~town~~ Town.

**§ 225-11.7 Amendments.**

This ~~Bylaw~~ and the boundaries of the districts as established hereunder, may from time to time be amended at a ~~town meeting~~ Town Meeting in accordance with the provisions of ~~M.G.L. Chapter~~MGL c. 40A, § 5.

**§ 225-11.8 Validity.**

Should any section or provision of this ~~Bylaw~~ be declared unconstitutional or invalid, that decision shall not affect the validity of any other section thereof.

**Article XII**  
**Definitions**

**§ 225-12.1 Terms defined.**

For the purpose of this ~~By-Law~~bylaw, the word "person" includes a partnership, firm, association; or corporation, or other entities; words in the present tense include the future, and words in the singular number include the plural and vice versa. Certain terms or words shall be defined as follows:

**ACCESSORY FARM STORE**

An on-site retail outlet in a permanent structure for farm products that is subordinate to the growing or harvesting of crops (except cannabis) or the raising of livestock, designed to bring the public to the farm for the purpose of agricultural products, agriculturally related products; and/or value-added agricultural products.

**[Added 6-10-2019 ATM by Art. 7]**

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**ACCESSORY USE OR BUILDING**

A use or a building customarily incidental and subordinate to the principal use or building and located on the same lot as the principal use or building or on an adjacent lot under the same ownership.

**AGRICULTURAL TOURISM or AGRITOURISM**

Agriculturally related accessory uses that are subordinate to the growing or harvesting of crops (except cannabis) or the raising of livestock, designed to bring the public to a farm on a temporary or continuous basis, including, but not limited to, retail sales of agricultural products, short-term stays, weddings, similar events, small concerts, and other farm-located events, classes and workshops.

[Added 6-10-2019 ATM by Art. 7]

**BILLBOARD**

Any sign of more than 25 square feet.

**BUILDING**

Any structure having a roof or intended for the shelter, housing or enclosure of persons, animals, materials or motor vehicles.

**BUILDING HEIGHT**

The vertical distance from the finished grade at any point under consideration to the highest point of the roof.

**BUILDING LINE**

A line parallel to the property line at the street at a distance at least equal to the required front yard distance.

**~~CAMPER~~**

~~Commonly called travel trailers, pick-up coaches and tent trailers, but not designed for permanent dwelling.~~

**CORNER LOT**

A lot with two adjacent sides facing on a street, or different streets so that the interior angle of the intersection is not more than 120°.

**DAY-CARE CENTER**

Any establishment, whether public or private, that provides care for children and is licensed by the Massachusetts Department of Early Education and Care.

[Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**DWELLING**

A building primarily used or primarily designed for use in whole or in part for human habitation.

**DWELLING UNIT**

One or more rooms constituting a separate, independent housekeeping establishment with cooking, living, sanitary and sleeping facilities for the use of one family.

**EFFECTIVE DATE OF THIS BY-LAW**

The effective date of this ~~By-Law~~ bylaw shall be the date on which it is adopted at a ~~town meeting~~ Town Meeting.

**FAMILY**

Any number of persons living together as a single housekeeping unit.

**FRONT YARD**

An open space between the principal buildings and the front line extending the full width of the lot.

**GARAGE**

A building used primarily for storage of motor vehicles in which no business or services connected with motor vehicles is conducted.

**HOTEL, LODGING HOUSE, MOTEL OR INN**

A building in which space is used or rented for lodging or feeding people as paying guests on a transient or permanent basis.

**LIGHT INDUSTRIAL DISTRICT**

A light industrial district is used for the manufacture or assembly of products, including processing, blending, fabrication, assembly, treatment and packaging without the need for special permit, ~~variance~~, amendment, waiver or other discretionary approval.

**[Added 6-10-2019 ATM by Art. 8]**

**LOT**

A plot or parcel of land held in identical ownership occupied or capable of being occupied by one principal building and accessory buildings or uses customarily incident to it, including open spaces as required by this ~~By-Law~~ bylaw.

**LOT DEPTH**

The average distance between the street line and the rear lot line measured along the lot side lines.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**LOT FRONTAGE**

The distance between the lot side lines as measured along a ~~town~~-accepted street line, or a street line in a subdivision approved by the Planning Board.

**MOBILE HOME**

A vehicular, portable completely enclosed structure built as a permanent dwelling unit to be transported after the fabrication on its own wheels or on a flatbed or detachable wheels. For the purpose of this ~~Bylaw~~, the term "~~Mobile Home~~mobile home" includes trailers incorporating the characteristics of mobile homes as defined herein.

**MOBILE HOME PARK**

Shall be used in this ~~By-Law~~bylaw as that term is used and defined in Massachusetts General Laws Chapter MGL c. 140, Sections ~~§§~~ 32F through 32L, inclusive.

~~**MOTOR HOME**~~

~~A portable dwelling that may be registered and insured for highway use, designed to be used for travel, recreational and vacation uses.~~

**MULTIFAMILY DWELLING**

A building arranged, or designed to be occupied by three or more families living individually under one roof.

~~**NON-CONFORMING**~~**NONCONFORMING USE**

A lawfully existing building, structure or use of a building, structure or land which does not on the effective date of this ~~By-Law~~bylaw or any amendment thereto conform to the regulations of the district in which it is situated.

[Amended at time of adoption of Code]

**ONE-FAMILY DWELLING**

A dwelling designed for or occupied by a single family.

**PERMIT GRANTING AUTHORITY**

Permit granting authority shall mean the Cheshire Board of Appeals.

**PRIVATE CLUB**

A ~~non-profit~~nonprofit organization, with written bylaws, formed to further the common social interests, or hobbies, of its members.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**REAR YARD**

An open space the full width of the lot extending from the rear line of the building to the rear line of the lot. In the case of a corner lot, the rear yard shall not extend beyond the building ~~set-back~~setback line of the side street.

**SIDE YARD**

An open space between the building and the adjacent side line of the lot and extending from the front yard to the rear yard.

**SPECIAL PERMIT GRANTING AUTHORITY**

Special permit granting authority; shall mean the Cheshire Planning Board and Zoning Board of Appeals as designated in this ~~By-Law~~bylaw.

**STREET**

A public way or a way maintained and used as a public way or a way approved by the Planning Board under subdivision control regulations giving access to the lot. "Street" shall be deemed to include the entire width of the right-of-way.

**TWO-FAMILY DWELLING**

A dwelling designed for or occupied by two families.

**VALUE-ADDED AGRICULTURE**

The enhancement or improvement of an agricultural commodity (except cannabis) or of an animal or plant product produced on a farm to a higher value. The enhancement or improvement includes but is not limited to marketing; processing, transforming; and/or packaging of agricultural commodities grown, raised; or otherwise created on the premises controlled by the owner of the agricultural operation into a product of higher value.

**[Added 6-10-2019 ATM by Art. 7]**

**ZONING**

Zoning, as used in this ~~chapter~~bylaw, shall mean ordinances and ~~By-Laws~~bylaws adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants.

Town of Cheshire  
PRELIMINARY DRAFT

## Division 2: Regulations

### Chapter 300 Subdivision Regulations

**[HISTORY: Adopted by the Planning Board of the Town of Cheshire June 1975. Amendments noted where applicable.]**

#### Article I General Provisions

**§ 300-1 Purpose.**

"~~The subdivision control law~~ Subdivision Control Law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or may hereafter be, put in effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas. The powers of a planning board and of a board of appeal under the ~~subdivision control law~~ Subdivision Control Law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb to the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for insuring compliance with the applicable zoning ordinances or by-laws; for securing adequate provision for water, sewerage, drainage, underground utility services, fire, police, and other similar municipal equipment, and street lighting and other requirements where necessary in a subdivision; and for co-ordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions. ~~It is the intent of the subdivision control law~~ Such powers may also be exercised with due regard for the policy of the commonwealth to encourage the use of solar energy and protect the access to direct sunlight of solar energy systems. It is the intent of the Subdivision Control Law that any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to the recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivisions of land; provided, however, that such board may, when appropriate, waive, as provided for in section eighty-one R, such portions of the rules and regulations as is deemed advisable." (Section 81-M of Chapter MGL c. 41, G.L.) § 81-M

**§ 300-2 Authority.**

Under the authority vested in the Planning Board of the Town of Cheshire by ~~Section MGL c. 41, § 81-Q of Chapter 41 of the General Laws~~, said Board hereby adopts these rules and regulations governing the subdivision of land in the ~~City (of Town)~~ of Cheshire.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 300-3 Definitions.**

In construing the ~~subdivision control law~~ Subdivision Control Law, the following words shall have the following meanings, unless a contrary intention clearly appears:

**APPLICANT**

Shall include an owner, or his agent or representative, or his assigns.

**CERTIFIED BY (OR ENDORSED BY) A PLANNING BOARD**

As applied to a plan or other instrument required or authorized by the ~~subdivision control law~~ Subdivision Control Law to be recorded, shall mean; bearing a certification or endorsement signed by a majority of the members of a planning board, or by its chairman or clerk ~~or~~ for any other person authorized by it to certify or endorse its approval or other action and named in a written statement to the ~~Register of~~ Deeds and ~~Recorder of the land court~~ Land Court, signed by a majority; of the board.

**LOT**

An area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings.

**MUNICIPAL SERVICE**

Public utilities furnished by the city or town in which a subdivision is located, such as water, sewerage, gas and electricity.

**PLANNING BOARD**

~~A planning board established under section 81-A, or a board of selectmen acting as a planning board under said section, or a board of survey in a city or town which has accepted the provisions of the subdivision control law as provided in section 81-N or corresponding provisions of earlier laws, or has been established by special law with powers of subdivision control.~~

The five-member Town Planning Board established under MGL c. 41, § 81-A.

**PRELIMINARY PLAN**

A plan of a proposed subdivision or resubdivision of land drawn on tracing paper, or a print thereof, showing:

- A. The subdivision name, boundaries, ~~n~~North point, date, scale, legend and title "Preliminary Plan";
- B. The names of the ~~names of the~~ record owner and the applicant and the name of the designer, engineer; or surveyor;
- C. The names of all abutters, as determined from the most recent local tax list;



**Town of Cheshire**  
**PRELIMINARY DRAFT**

- D. The existing and proposed ~~lienes~~ of streets, ways, easements and any public areas within the subdivision in a general manner;
- E. The proposed system of drainage, including adjacent existing natural waterways, in a general manner;
- F. The approximate boundary ~~lienes~~ of proposed lot, with approximate areas and dimensions;
- G. The names, approximate location and widths of adjacent streets; and
- H. The topography of the land in a general manner.

**RECORDED**

Recorded in the ~~Registry of~~ ~~Deeds~~ of the county or district in which the land in question is situated, except that, as affecting registered land, it shall mean filed with the ~~Recorder of the land-~~  
~~court~~ Land Court.

**REGISTER OF DEEDS**

The ~~Register of~~ ~~Deeds~~ of the county or district in which the land in question, or the city or town in question, is situated, and, when appropriate, shall include the ~~Recorder of the land-~~  
~~court~~ Land Court.

**REGISTERED MAIL**

Registered or certified mail.

**REGISTRY OF DEEDS**

The ~~Registry of~~ ~~Deeds~~ of the county or district in which the land in question is situated, and, when appropriate, shall include the ~~land-~~  
~~court~~ Land Court.

**SUBDIVISION**

The division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the ~~subdivision-control-law~~ Subdivision Control Law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the ~~clerk of the city or town~~ Town Clerk certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the ~~subdivision-control-law~~ Subdivision Control Law, or (c) a way in existence when the ~~subdivision-control-law~~ Subdivision Control Law became effective in the ~~city or town in which the land lies~~ Town, having, in the opinion of the ~~planning board~~ Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in

**Town of Cheshire**  
**PRELIMINARY DRAFT**

relation to the proposed use of the land abutting thereon or served thereby, and for the installation ~~or of~~ municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by ~~zoning or other ordinance or by-~~ law, if any, of said city or town Zoning Bylaw of the Town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least 20 feet. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the ~~subdivision control law~~ Subdivision Control Law went into effect in the ~~city or town in which the land lies~~ Town into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision.

**SUBDIVISION CONTROL**

The power of regulating the subdivision of land granted by the ~~subdivision control law~~ Subdivision Control Law.

**§ 300-4 Plan believed not to require approval.**

- A. Any person who wishes to cause to be recorded in the Registry of Deeds or to be filed with the Land Court a ~~P~~plan of land and who believes that his plan does not require approval under the Subdivision Control Law may submit his plan and application ~~From~~ A (see Appendix) to the Planning Board, accompanied by the necessary evidence to show that the plan does not require approval. Said person shall file, by delivery or registered mail, a notice with the ~~City (or Town)~~ Clerk stating the date of submission for such determination and accompanied by a copy of said application. If the notice is given by delivery, the ~~City (or Town)~~ Clerk shall, if requested, give a written receipt therefor.
- B. If the Planning Board determines that the plan does not require approval, it shall, without a public hearing and without unnecessary delay, endorse on the plan the words "Approval under the Subdivision Control Law not required."
- C. The Planning Board may add to such endorsement a statement of the reason approval is not required. The plan will be returned to the applicant, and the Planning Board shall notify the ~~City (or Town)~~ Clerk of its action.
- D. If the Planning Board determines that the plan does require approval under the Subdivision Control Law, it will so inform the applicant and return the plan. The Planning Board will also notify the ~~City (or Town)~~ Clerk of its action, in writing, within 21 days of submittal.
- E. If the Planning Board fails to act upon a plan submitted under this section within ~~14~~21 days after its submission, it shall be deemed to have determined that approval under the Subdivision Control Law is not required.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 300-5 Definitive plan required for subdivision.**

No person shall make a subdivision within the meaning of the Subdivision Control Law of any land within the ~~City (or Town),~~ or proceed with the improvement or sale of lots in a subdivision, or the construction of ways, or the installation of municipal services therein, unless and until a ~~Definitive Plan~~definitive plan of such subdivision has been submitted and approved by the Planning Board as hereinafter provided.

**Article II**  
**Procedure for Submission and Approval of Plans**

**§ 300-6 Sketch plans.**

- A. Before preparation of an official subdivision plan, it is strongly recommended that the subdivider submit a sketch plan of the proposed subdivision to the Planning Board and consult with the Board informally regarding procedures, design standards and required improvements in order to save time and avoid costly mistakes.
- B. A subdivision plan shall be considered as submitted to the Planning Board when delivered at a meeting of the ~~b~~Board or when sent by ~~certified or~~ registered mail to the Planning Board, care of the Town Clerk, together with a properly filled out application form, fee and supporting documents.

**§ 300-7 Preliminary plans.**

A. General.

- (1) A ~~Preliminary Plan~~preliminary plan of a residential subdivision may, and a preliminary plan of a nonresidential subdivision must, be submitted by the subdivider to the Planning Board and to the Board of Health for discussion and approval, modification or disapproval by each ~~b~~Board. The submission of such a ~~Preliminary Plan~~preliminary plan will enable the subdivider, the Planning Board, the Board of Health, other municipal agencies and owners of property abutting the subdivision to discuss and clarify the problems of such subdivision before a ~~Definitive Plan~~definitive plan is prepared. Therefore, it is strongly recommended that a ~~Preliminary Plan~~preliminary plan be filed in each case. A properly executed application Form B (see Appendix) shall be filed with the ~~Preliminary Plan~~preliminary plan submitted to the Planning Board.
  - (2) The applicant shall file by delivery or registered mail a notice with the ~~City (or Town)~~ Clerk stating the date of submission for such approval of a ~~Preliminary Plan~~preliminary plan, accompanied by a copy of the completed application (Form B).
- B. Contents. The ~~Preliminary Plan~~preliminary plan shall be drawn on tracing paper with pencil at a suitable scale and (two) prints shall be filed at the office of the Planning Board and one print at the office of the Board of Health. Said plan shall be identified as a "Preliminary Plan" and show all the information described under the definition of the ~~Preliminary Plan~~"preliminary plan" so as to form a clear basis for discussion of its problems and for preparation of the ~~Definitive Plan~~definitive

**Town of Cheshire**  
**PRELIMINARY DRAFT**

~~plan.~~ During discussion of the ~~Preliminary Plan~~preliminary plan the complete information required for the ~~Definitive Plan~~definitive plan (§ 300-8B, Contents) and the financial arrangements. (§ 300-8F, Performance Guarantee) will be developed.

- C. Approval. The Planning Board may give such ~~Preliminary Plan~~preliminary plan its approval, with or without modification. Such approval does not constitute approval of a subdivision. Within 45 days after submission of a preliminary plan, each Board shall notify the applicant and the Town Clerk, by registered mail, either that the plan has been approved, or that the plan has been approved with modifications suggested by the Board or agreed upon by the person submitting the plan, or that the plan has been disapproved; and in the case of disapproval, the Board shall state in detail its reasons therefor. The Planning Board shall notify the Town Clerk of its approval or disapproval, as the case may be. Except as is otherwise provided, the provisions of the Subdivision Control Law relating to a plan shall not be applicable to a preliminary plan, and no Register of Deeds shall record a preliminary plan.

**§ 300-8 Definitive plans.**

**A. General.**

- (1) Any person who submits a ~~Definitive Plan~~definitive plan of a subdivision to the Planning Board for approval shall file with the Board the following:
- (a) An original drawing of the ~~Definitive Plan~~definitive plan and (three) contact prints thereof, dark line on white background. The original drawing will be returned after approval or disapproval.
- (b) A properly executed application Form C (see Appendix).
- (c) A deposit of ~~\$50~~in an amount set by the Planning Board to cover the cost of advertising and notices.
- (2) The applicant shall file by delivery or registered mail a notice with the Town Clerk stating the date of submission for such approval and, accompanied by a copy of the completed application (Form C).
- B. Contents. The ~~Definitive Plan~~definitive plan shall be prepared by an engineer or surveyor and shall be clearly and legibly drawn in black India ink upon tracing cloth. The plan shall be at a scale of one inch equals 40 feet or such other scale as the Planning Board may accept to show details clearly and adequately. Sheet sizes shall preferably not exceed 16 inches by 21 inches. If multiple sheets are used, they shall be accompanied by an index sheet showing the entire subdivision. The ~~Definitive Plan~~definitive plan shall contain the following information:
- (1) Subdivision name, boundaries, ~~n~~North point, date and scale.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (2) Name and address of record owner, subdivider and engineer or surveyor.
- (3) Names of all abutters as they appear in the most recent tax list.
- (4) Lines of existing and proposed streets, ways, lots, easements; and public or common areas within the subdivision. (The proposed names of proposed streets shall be shown in pencil until they have been approved by the Planning Board.)
- (5) Boundary lines, areas and dimensions of all proposed lots, designated numerically and in sequence.
- (6) Sufficient data to determine the location, direction and length of every street and way line, lot line and boundary line, and to establish these lines on the ground.
- (7) Location of all permanent monuments properly identified as to whether existing or proposed.
- (8) Location, names and present widths of streets; bounding, approaching or within reasonable proximity of the subdivision.
- (9) Indication of purpose of easements; and/or restrictions.
- (10) Suitable space to record the action of the Planning Board and the signatures of the members of the Planning Board (or officially authorized person).
- Note: The following items may be submitted on the same sheet as the ~~Definitive Plan~~definitive plan or on separate sheets.
- (11) Existing and proposed topography at a suitable contour interval if required by the Planning Board.
- (12) Location of ~~flood plains~~floodplains and wetland areas, if any.
- (13) Overall plan for drainage of surface water.
- (14) Directly above or below the layout plan of each road, a profile showing existing and proposed grades along the centerline and sidelines of that road, together with figures of elevation at the top and bottom of all even grades and at ~~twenty-five~~25-foot intervals along all vertical curves. Intersecting roads shall be clearly indicated on the profile. The horizontal scale of the profiles shall be 40 feet to one inch, and the vertical scale shall be four feet to one inch. Only one road plan and profile shall be drawn on a sheet except by permission of the Planning Board.
- (15) Location and species of trees intended for preservation within the road rights-of-way.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

(16) Any other information pertaining to the natural characteristics of the site that may be needed in the opinion of the Planning Board or the Board of Health for determination of the suitability of the land for proposed purposes shall be furnished at the developer's expense.

(17) Proposed layout of storm drainage, water supply and sewage disposal systems.

C. Impact statement. Any land subdivision plan consisting of 10 or more lots must be accompanied by an impact statement which details the probable effects of the proposed subdivision on the following aspects of concern to the Town:

(1) Increases in vehicular traffic on adjacent public ways.

(2) Changes in surface drainage in surrounding area.

(3) Land erosion or loss of tree cover.

(4) Disturbance to other aspects of the natural ecology.

(5) Demands on public services and utilities.

D. Plan approval by Board of Health.

(1) At the time of filing of the definitive plan, the subdivider shall also file with the Board of Health two contact prints of the ~~Definitive Plan~~ definitive plan. The Board of Health shall report to the Planning Board in writing approval or disapproval of said plan, and in the event of disapproval shall make specific findings; as to which, if any, of the lots shown on such plan cannot be used for building sites without injury to the public health, and include such specific findings and the reasons therefore in such report, and, where possible, shall make recommendations for the adjustment thereof. If a municipal sewerage system will serve the proposed subdivision, then failure of the Board of Health to make such a report within 45 days after the plan is filed with ~~their~~ its office shall be deemed approval by such ~~Board~~. A copy of the report, if any, shall be sent by such ~~Board~~ to the applicant.

(2) Every lot not serviced by a municipal water supply and sewage disposal systems shall be provided with water supply and sewage disposal installations in compliance with the provisions of the State Sanitary Code, subject to the approval of the Board of Health.

(3) The Board of Health may approve the plan on condition that, prior to the issuance of a building permit for a dwelling on any lot, soil and percolation tests be made in accordance with ~~their~~ its specifications by a qualified technician as to suitability of a specific location for subsurface sewage disposal installation in compliance with the State Sanitary Code.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- (4) Based on the recommendation of the State Department of Public Health or the Town's Board of Health, where, due to restrictive water, soil, topographic, geologic, or other natural conditions, the proposed development is of a density which exceeds the sustaining capacity of the proposed lots in ~~the terms~~ of individual sewage disposal systems and wells on each lot, the Planning Board may require that the developer revise his plan to either provide for:
- (a) A consolidated water supply system; or
  - (b) A consolidated sewage disposal system; or
  - (c) An increase in lot size so that individual wells and sewage disposal systems may have adequate areas in which to properly function on the same lot.
- (5) The Board of Health may require as a condition of the subdivision approval that a performance bond or deposit of money or negotiable securities ~~by~~<sup>be</sup> furnished by the subdivider to guarantee the construction of surface drainage improvements recommended by the Board and that all required improvements shall be made without causing any condition of public nuisance through dust, or surface drainage; or any act of negligence by the subdivider or his agent during the period of construction. Such performance guarantee may be released only after completion of the work to the satisfaction of the Board of Health. In viewing possible drainage problems, the Board is not limited to lots as shown on the subdivision plan, but may in appropriate cases consider areas outside the subdivision.
- (6) Land subject to flooding or land deemed by the Board of Health to be uninhabitable shall not be approved by the Planning Board for residential occupancy, nor for such other uses as may increase danger to health, life or property, or aggravate the flood hazard. Such land within the subdivision shall be set aside for such uses as shall not be endangered by periodic or occasional inundation or improved in a manner satisfactory to the Planning Board and the Board of Health to remedy said hazardous condition.

E. Public hearing.

- (1) Before approval of the ~~Definitive Plan~~<sup>definitive plan</sup> is given, a public hearing shall be held by the Planning Board. Notice of such hearing shall be given by the Planning Board at least 14 days prior thereto by advertisement in a newspaper of general circulation in the ~~€~~Town once in each of two successive weeks, the first publication being not less than 14 days before the day of such hearing, or if there is no such newspaper in the ~~€~~Town, then by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of such hearing and by mailing a copy of such advertisement to the applicant and to all owners of land abutting upon the land included in such plan appearing on the most recent tax list. When the Planning Board is also the special permit granting authority for a special permit applicable to the plan, the Planning Board

**Town of Cheshire**

**PRELIMINARY DRAFT**

may hold the definitive plan public hearing together with the public hearing required by MGL c. 40A, § 9, and allow for the publication of a single advertisement giving notice of the consolidated hearing.

- (2) The applicant and his engineer and surveyor shall be present at the public hearing.
- (3) A hearing by the Conservation Commission may be required under the provisions of the Wetlands Protection Act, ~~Chapter~~ MGL c. 131, Section § 40 of the General Laws.

**F. Performance guarantee.**

- (1) Before endorsement of the Planning Board's approval of a ~~Definitive Plan~~ definitive plan of a subdivision, the subdivider shall agree to complete the required improvements specified in Article IV for any lots in a subdivision.
- (2) Approval of the plan by the Planning Board may be made subject to a condition that such approval shall automatically ~~reseind~~ be rescinded after a period of time set by the Planning Board unless all required improvements as specified in these regulations and in the recommendations of the Board of Health have been completed within that period of time.
- (3) The construction and installation of required improvements shall be secured by one, or in part by one and in part by the other, of the following methods, which may from time to time be varied by the applicant:
  - (a) Approval with bonds or surety.
    - [1] The subdivider shall either file a performance bond or a deposit of money or negotiable securities in an amount determined by the Board to be sufficient to cover the cost of all or any part of the improvements specified in ~~Section 6~~ Article IV not covered by a covenant under Subsection **F(3)(b)** hereof.
    - [2] Such bond or security, if filed and deposited, shall be approved as to form and manner of execution by the Town Counsel, and shall be contingent on the completion of such improvements within the period of time specified by the Planning Board. If the required improvements are not completed within the set period of time, the Planning Board may require an estimate of the cost of the remaining work, increase the amount of performance bond, and establish a new date for the completion of said improvements. Failure of the developer to complete the improvements within the set period of time, or any extension thereof, shall not relieve the developer from his obligation to pay for increased costs for completing the improvements in excess of his performance bond.



**Town of Cheshire**

**PRELIMINARY DRAFT**

- (b) Approval with covenant. The subdivider shall file a covenant, executed and duly recorded by the owner of record, running with the land, whereby such ways, services and improvements as specified in ~~Section~~ Article IV not covered by bond or deposit under Subsection F(3)(a) hereof shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed.
- G. Reduction of bond or surety. The penal sum of any such bond, or the amount of any deposit held under Subsection F(3)(a) above, may, from time to time, be reduced by the Planning Board and the obligations of the parties thereto released by said Board, in whole or in part. If release is by reason of covenant, a new plan of the portion to be subject to the covenant may be required.
- H. Release of performance guarantee.
- (1) Upon the completion of improvements required under Article IV, security for the performance of which was given by bond, deposit or covenant, or upon the performance of any covenant with respect to any lot, the subdivider, may orally request and agree on terms of release with said Planning Board, or he may send by registered mail to the ~~City (or Town)~~ Clerk a written statement in duplicate that the ~~said~~ construction or installation in connection with which such bond, deposit or covenant has been given has been completed in accordance ~~to~~ with the requirements contained under Article IV, such statement to contain the address of the applicant, and the ~~City (or Town)~~ Clerk shall forthwith furnish a copy of said statement to the Planning Board. If the Planning Board determines that said construction or installation has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the ~~clerk of the city or town~~ Town Clerk the details wherein said construction and installation fails to comply with the requirements contained under Article IV. ~~Failure~~ Upon the failure of the Planning Board to act on such application within 45 days after the receipt of the application by the ~~City (or Town)~~ Clerk, all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned and any such covenant shall become void. In the event that said ~~forty-five~~ 45-day period expires without such specification, or without the release and return of the bond or return of the deposit or release of the covenant as aforesaid, the ~~City (or Town)~~ Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.
- (2) Before the final release by the Planning Board of the ~~the~~ Town's interest in a performance bond, deposit or covenant, the applicant shall file with the Board a certificate (Form F) by a registered Massachusetts professional civil engineer and land surveyor declaring that streets, storm drains and all other required construction and improvements on the ground have been properly completed in accordance with the approved plan and subdivision regulations of the Planning Board, and with the recommendations by the Board of Health.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

I. Certificate of approval.

- (1) The action of the Planning Board in respect to such plan shall be by vote, copies of which shall be certified and filed with the Town Clerk and sent by delivery or mail to the applicant. If the Planning Board modifies or disapproves such plan, it shall state in its vote the reasons for its action. Final approval, if granted, shall be endorsed on the original drawing of the ~~Definitive Plan~~ definitive plan by the signatures of a majority of the Planning Board but not until the statutory ~~twenty~~ 20-day appeal period has elapsed following the filing of the certificate of the action of the Planning Board with the Town Clerk, provided that the Town Clerk has not received notice of appeal to the Superior Court, and provided further that other conditions of approval, if a part of the Board's action, are transmitted or corrected to the satisfaction of the Board.
- (2) Approval of the ~~Definitive Plan~~ definitive plan does not constitute the laying out or acceptance by the Town of streets within a subdivision, nor does it indicate in any way compliance with the provisions of the Wetlands Protection Act, Chapter ~~MGL c. 131, Section § 40 of the General Laws.~~

J. Submission of documents. Easements, and bond and/or covenant, shall be submitted within 20 days from the date of approval of the ~~Definitive Plan~~ definitive plan to the Planning Board, which then shall submit the documents to the Town Counsel for approval as to form and legality.

K. Filing of plans in ~~Registry of Deeds or Land Court~~ Land Court. Approval of all subdivisions is subject to the condition that, unless an appeal has been taken from such approval as provided by statute, the subdivider will record the subdivision plan in the Berkshire Middle District Registry of Deeds, or the Land Court, within six months from the date of its approval, and furnish a copy of the recorded plan to the ~~Planning Board~~ Planning Board. If the applicant delays recording of such plan past the required six-month period, such plan shall not be accepted for recording by the Registry of Deeds or Land Court unless and until it has endorsed thereon, or recorded therewith and referred to thereon, a certificate of the Planning Board, or the Town Clerk, dated within 30 days of such recording, that the approval has not been modified, amended or rescinded, nor the plan changed. Such certificate shall, upon application, be made by the Board or the Town Clerk unless the records of the Board or the Town Clerk receiving the application show that there has been such modification, amendment, rescission or change.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**Article III**  
**Design Standards**

**§ 300-9 Streets.**

**A. Location and alignment.**

- (1) All streets in the subdivision shall be designed so that, in the opinion of the Planning Board, they will provide safe vehicular travel and adequate provision for maintenance and maintenance equipment accessibility.
- (2) The proposed streets shall conform, so far as practicable, to the Master or Study Plan as may be adopted in whole or in part by the Planning Board.
- (3) Provision satisfactory to the Planning Board shall be made for the proper projection of streets, or for access to adjoining property which is not yet subdivided.
- (4) Reserve strips prohibiting access to streets or adjoining property shall not be permitted, except where, in the opinion of the Planning Board, such as-strips shall be in the public interest.
- (5) The minimum radii of centerline curvature for minor streets shall be 200 feet; collector streets shall be 300 feet; and streets shorter than 500 feet shall be 100 feet A minimum ~~of 50 feet~~ foot tangent shall be introduced between reverse curves.
- (6) Streets shall be laid out so as to intersect as nearly as possible at right angles. No streets shall intersect any other street at less than 60°.
- (7) Property lines at street intersections shall be rounded or cut back to provide for a curb radius of not less than 40 feet.
- (8) All streets shown on preliminary plans shall be named, in pencil, and not numbered or lettered, and be substantially different than existing streets, except; that streets which join or are in alignment with streets of an abutting or neighboring property shall bear the same name.
- (9) All streets shall be arranged so as to obtain as many of the building sites as possible at or above the grade ~~or~~ of the streets.

**B. Width.**

- (1) The minimum width of the street rights-of-way shall be:
  - (a) Collector street: 60 feet.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

(b) Minor street: 50 feet.

(c) Cul-de-sacs: 60 ~~feet~~foot radii.

(2) Greater width shall be required by the Planning Board when deemed necessary for present and future vehicular travel.

C. Grade. Grades of streets shall be not less than 0.5%. Grades shall not be more than 6.0% for collector streets nor more than 10% for minor streets.

D. Dead-end streets.

(1) Dead-end streets shall not be longer than 500 feet, unless, in the opinion of the Planning Board, a greater length is necessitated by topography or other local conditions.

(2) Dead-end streets shall be provided at the closed end with a ~~turn-around~~turnaround having an outside roadway diameter of at least 100 feet, and a property line diameter of at least 120 feet.

**§ 300-10 Easements.**

A. Easements for utilities across lots or centered on rear or side lot lines shall be provided where necessary and shall be at least 12 feet wide.

B. Where a subdivision is traversed by a ~~water course, drainage way~~watercourse, drainageway, channel or stream, the Planning Board may require that there be provided a ~~storm water~~stormwater easement or drainage right-of-way of adequate width to conform substantially to the lines of such ~~water course, drainage way~~watercourse, drainageway, channel or stream, and to provide for construction or other necessary purposes.

C. At end of ~~Cul-de-sacs~~, the ~~b~~Board may require an easement ~~of~~of 20 feet wide to provide for continuation of pedestrian walks and/or utilities.

**§ 300-11 Open spaces.**

Before approval of a plan, the Planning Board may also in proper cases request the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air. The park or parks shall consist of at least 2,000 square feet of area for each single dwelling lot in the subdivision or for each dwelling unit in multidwelling lots and shall be suitably prepared by the developer. Such a park is recommended in subdivisions containing 25 or more dwelling units. Said park or parks will be recommended for acceptance by the ~~t~~Town when the subdivision roads are recommended for acceptance.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 300-12 Protection of natural features.**

Due regard shall be shown for all natural features, such as large trees, ~~water courses~~watercourses, scenic points, historic spots, and similar community assets, which, if preserved, will add attractiveness and value to the subdivision.

**Article IV**  
**Required Improvements for Approved Subdivisions**

**§ 300-13 Streets and roadways.**

- A. The entire area of each street or way shall be cleared of all stumps, brush, roots, boulders, like material and all trees not intended for preservation.
- B. The full length and width of the traveled way shall be excavated or filled, as necessary, to a depth of at least 12 inches below the finished surface as shown on the profile. However, if the soil is soft and spongy, or contains undesirable material such as clay, ~~sandpockets~~sand pockets, peat or any other material detrimental to the subgrade, such material shall be removed and replaced with suitable well-compacted material.
- C. All parts of the traveled way shall be brought to a finished grade as shown on the profile of the ~~Definitive Plan~~definitive plan with at least the top 12 inches consisting of well-compacted gravel to a width of at least 24 feet, to be located centrally within the street right-of-way. At each side there shall be a shoulder three feet wide, also consisting of well-compacted binding gravel at least 12 inches deep. The gravel shall be spread and rolled in two layers of about six inches each. All stones larger than four inches shall be removed before layers are rolled. Rolling shall be done with a self-propelled roller weighing not less than eight tons and shall continue until a firm, even surface, true to line and grade, is obtained.
- D. On the completed gravel surface will be placed a two-inches layer of bituminous concrete binder followed by a one-inch layer of bituminous concrete as specified by the Massachusetts Department of Public Works Transportation.

**§ 300-14 Surface drainage.**

- A. Adequate disposal of surface water shall be provided. Catch basins and culverts shall be built in conformity with specifications of the Selectmen on both sides of the roadway on continuous grades at intervals of not more than 400 feet, at low points and sags in the roadway, and near the corners of the roadway at intersectiong streets.
- B. The subdivider may be required by the Planning Board to carry away by pipe or open ditch any spring or surface water that may exist either previous to, or as a result of the subdivision. Such drainage facilities shall be located in the street right-of-way where feasible, or in perpetual unobstructed easements of appropriate width.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

- C. A culvert or other drainage facility shall, in each case be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision. The Selectmen or the Highway Superintendent shall approve the design and size of facility based on anticipated run-off from a "ten-year" storm under conditions of total potential development permitted by the Zoning Bylaw in the watershed.
- D. The subdivider's engineer shall also study the effect of each subdivision on the existing downstream drainage facilities outside the area of the subdivision; this study shall be reviewed by the Selectmen or the Highway Superintendent. Where it is anticipated that the additional run-off incident to the development of the subdivision will overload any existing downstream drainage facility, the Planning Board shall not approve the subdivision until provision has been made for the improvement of said condition.

**§ 300-15 Utilities.**

- A. Sewer pipes and related equipment, such as manholes and connecting ~~y's~~ Ys, shall be constructed in conformity with specifications of the Massachusetts Department of ~~Public Works~~ Transportation.
- B. Adequate disposal of surface water shall be provided. Catch basins shall be built in conformity with specifications of the Massachusetts Department of ~~Public Works~~ Transportation on both sides of the roadways on continuous grades at intervals of not more than 400 feet, at low points and sags in the roadway and near the corners of the roadway at intersecting streets.
- C. In areas served by the Cheshire Water Company, water pipes and related equipment, such as hydrants and main shutoff valves, shall be constructed to serve all lots on each street in the subdivision in conformity with specifications of the Cheshire Water Company.
- D. In areas served by a private water supplier, said supplier shall be approved by the Department of Public Utilities.

**§ 300-16 Sidewalks.**

Sidewalks of not less than five feet in width shall be constructed in conformity with the specifications of the Massachusetts Department of ~~Public Works~~ Transportation when, in the opinion of the Planning Board, such sidewalks are necessary.

**§ 300-17 Monuments.**

Monuments shall be installed at all street intersections, at all points of change in direction or curvature of streets and at other points where, in the opinion of the Planning Board, permanent monuments are necessary. Such monuments shall conform to the standard specifications of the Massachusetts Department of ~~Public Works~~ Transportation and shall be set according to such specifications. No permanent monuments shall be installed until all construction which would destroy or disturb the monuments is completed.

**Town of Cheshire**  
**PRELIMINARY DRAFT**

**§ 300-18 Clean up.**

The entire area must be cleaned up so as to leave a neat and orderly appearance, free from debris and other objectionable materials.

**Article V**  
**Administration**

**§ 300-19 Waivers.**

Strict compliance with the requirements of these rules and regulations may be waived when, in the judgment of the Planning Board, such action is in the public interest and not inconsistent with the Subdivision Control Law.

**§ 300-20 State law references.**

For matters not covered by these rules and regulations, reference is made to ~~Section~~ MGL c. 41, §§ 81-K to 81-GG, inclusive, of Chapter 41 of the General Laws.

**§ 300-21 One dwelling per lot.**

Not more than one building designed or available for use for dwelling purposes shall be erected or placed or converted to use as such on any lot in a subdivision or elsewhere in the ~~City~~ (or Town) without the consent of the Planning Board.

**§ 300-22 Building permits.**

No building shall be erected within a subdivision without obtaining a building permit from the Building Inspector.

**Attachments:**

Attachment 1 - Standard Street Sections

Attachment 2 - Forms

